

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
MAR 02 1998
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ABU-ALI ABDUR' RAHMAN,

Plaintiff,

vs.

RICKY BELL,

Defendant.

Civil Case # 3-96-0380

Beginning February 6, 1998

CLERK'S COPY

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE TODD J. CAMPBELL

APPEARANCES:

For the Plaintiff:

Bradley A. MacLean &
William P. Redick, Jr.
Attorneys at Law
Nashville, TN

For the Defendant:

John H. Baker, III &
Don Ungurait
Asst. Attorneys General
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Official Court Reporter:

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Nashville, Tn. 37203

1 February 11, 1998

2 THE COURT: All right. I see Mr. Camp is
3 here. Welcome.

4 MR. CAMP: Good morning, sir.

5 THE COURT: Mr. Redick, Mr. Baker, Mr.
6 MacLean, et cetera, we are going to embark on a
7 discussion about which witnesses we are going to call
8 today after we have gathered additional information,
9 about availability.

10 One of the reasons I agreed to Mr. Camp
11 was he was one of the people we weren't quite sure of his
12 availability. He is obviously here. It appears we will
13 be able to hear him shortly.

14 Can you enlighten me as to where we are on
15 the other loose ends before we call a witness?

16 MR. MACLEAN: Your Honor, the one other
17 witness that I was responsible for this morning was Nancy
18 Lancaster who is due to arrive this morning. I spoke to
19 her last night. Her plane was supposed to arrive at 8:30
20 or 8:15, or something like that, and my secretary was
21 going to pick her up at the airport. She hasn't arrived
22 here yet. I have someone else out looking for her. I
23 would like 15 or 20 minutes.

24 THE COURT: I will give you time to speak
25 to her. She will be arriving sometime this morning?

1 MR. REDICK: Unless something happened to
2 her flight.

3 THE COURT: She is arriving from
4 Atlanta?

5 MR. REDICK: Right. I don't know what
6 airline.

7 THE COURT: I am not going to say it. Mr.
8 Redick.

9 MR. REDICK: Judge, I spoke to Dr.
10 Blankenship and Dr. Winbush last night. Dr. Winbush is
11 leaving town today and coming back tomorrow night.

12 Dr. Blankenship, after we discussed the
13 situation, both of those witnesses are available to
14 testify Friday week.

15 THE COURT: The 20th?

16 MR. REDICK: Yes. I think we can complete
17 their testimony from one o'clock on Friday.

18 THE COURT: If we started at one o'clock
19 on Friday the 20th you believe we can complete them that
20 day?

21 MR. REDICK: I do.

22 THE COURT: Mr. Baker, do you have any
23 quarrel with that?

24 MR. REDICK: My only concern is when will
25 will we do the state's proof? Part of my concern is

1 particularly with Mr. Boyd, Mr. Beard --

2 THE COURT: We will do the state's proof
3 this week.

4 MR. BAKER: Am I going to be able -- if
5 they raise something with Dr. Winbush later am I going to
6 be able to call my witnesses again -- if we get out of
7 order and one of their witnesses raises something new?

8 Am I going to be able to rebut that at a
9 later time if that occurs?

10 THE COURT: Well, the short answer to that
11 is yes. But maybe I am missing something here. Mr. Boyd
12 and Mr. Beard are not sociologists to the best of my
13 knowledge. Mr. Winbush is. He is going to testify, as I
14 understand it, about the unique dynamics in the
15 African-American community and how that might relate to
16 some of the psychological issues.

17 And the other gentlemen, Blankenship, is
18 going to testify by way of an offer of proof about
19 something to do with perceptions of unanimous jury
20 instructions, or on that issue in any event.

21 I am not sure how Mr. Beard and Boyd could
22 have any information that would be pertinent.

23 MR. BAKER: My concern, Dr. Winbush, if he
24 gets into a discussion of issues related to the Southeast
25 Gospel Ministry thing -- I don't know that he is going to

1 do it but if he is, I think we run that possibility.

2 I believe I may be wrong. It seems like
3 the other day he made some mention of attempting to find
4 out information about that organization.

5 If he is not going to testify about that
6 and raises that then obviously there would be nothing to
7 rebut. If he is, there may be something to rebut.

8 MR. REDICK: If I could say, he doesn't
9 know any more about that than what he testified to in
10 court the other day. He doesn't have anymore testimony
11 to offer about that.

12 THE COURT: You're not going to be
13 offering him as a fact witness about that particular
14 group?

15 MR. REDICK: No, Your Honor.

16 THE COURT: All right. Based upon that
17 representation it seems slim that you would need to
18 recall anyone.

19 If things develop to the contrary, I will
20 give you that opportunity. I am not going to let you get
21 sandbagged.

22 So, I think that is slim at this point.

23 MR. BAKER: We have no other objections to
24 doing that. That will be fine, Your Honor.

25 THE COURT: Let me make it clear. You are

1 still going to be obligated, Mr. Baker, to put on your
2 proof this week with the asterisk or footnote if
3 something comes up on the 20th that requires -- I
4 emphasis requires -- rebuttal then we will have a full
5 and open discussion about it, and if you can convince me
6 somehow you have been taken advantage of, I will give you
7 a full opportunity to right that wrong.

8 MR. BAKER: Should I plan to have my proof
9 here Friday after they conclude their proof? Is that the
10 plan?

11 I don't know what the testimony and
12 witnesses are going to be tomorrow. I don't know what
13 all is left in their proof. I don't want to put on
14 witnesses and they put on proof and I find out there are
15 issues raised that I need to call witnesses back.

16 THE COURT: Let's go through it right
17 now. We are going to have the -- I forget the woman's
18 last name -- Lancaster.

19 MR. MACLEAN: Nancy Lancaster.

20 THE COURT: And Mr. Camp.

21 Mr. MacLean, do you have anybody else you
22 are going to put on today?

23 MR. MACLEAN: No, Your Honor.

24 THE COURT: So, today is Wednesday, I
25 believe. I kind of lost track. And then tomorrow, who

1 are you going to call?

2 MR. MACLEAN: John Zimmermann, Mr.

3 Alderman and Mr. Stephenson.

4 THE COURT: And then on Friday you have

5 Ms. Walton?

6 MR. MACLEAN: Ms. Walton and Ms. Bynum and

7 Mr. Dinkins, too.

8 THE COURT: When is he going to come?

9 MR. REDICK: Your Honor, I haven't reached
10 him yet. He was scheduled -- I don't know.

11 MR. BAKER: I had a message from Mr.

12 Dinkins yesterday when I got back to the office. I

13 tried to get back with him. There was no answer.

14 I assume he wants to know when to be here.

15 I assume if we can fit him in Thursday to make sure there

16 is plenty of time Friday, if there is no objection to

17 that --

18 MR. REDICK: Your Honor, we might be able

19 to get him over here this afternoon.

20 THE COURT: Let's make an effort to try to

21 get him here this afternoon. If not, I would like you to

22 make an effort to try to do it Thursday and then, Mr.

23 Baker, who is it that is still on your witness list so I

24 know how many people we have to jam in here on Friday.

25 MR. BAKER: They are calling John

1 Zimmermann. He was on our list.

2 THE COURT: I will give you an open
3 opportunity to do all the examination you need.

4 MR. BAKER: At this time it probably will
5 be Mr. Beard and Mr. Boyd, I believe.

6 THE COURT: All right. I think
7 particularly if we get Mr. Dinkins before Friday that
8 strikes me as not undoable.

9 If we have Mr. Beard and Boyd and Ms.
10 Bynum, all that can be done on Friday.

11 MR. BAKER: I believe so, Your Honor.

12 THE COURT: Mr. Redick, did you have any
13 communication from Mr. Dinkins?

14 MR. REDICK: No, Your Honor, I didn't.
15 Honestly, Your Honor, I forgot to call him last night.
16 He is in trial in Judge Gayden's court. I think we are
17 now trying to --

18 MR. MACLEAN: My assistant is now
19 downstairs looking to see if she can find our witness.
20 We will ask her to go find Mr. Dinkins.

21 THE COURT: If we need to, we can take a
22 break to call him to see if he is available to come in
23 this afternoon. Because I would like to try to get him
24 today if we can.

25 MR. REDICK: Your Honor, I talked to his

1 assistant in his trial Sunday night. She said that some
2 prearrangements had been made with Judge Gayden for him
3 to be released to come here. It was a question of
4 establishing a time.

5 So, I am thinking if we could maybe go to
6 the court room this morning sometime or send someone
7 over there, we could perhaps work it out for this
8 afternoon.

9 THE COURT: All right. Do you need to
10 make a phone call to Mr. Dinkins' office?

11 MR. MACLEAN: Your Honor, we can do that.

12 THE COURT: Who is going to be examining
13 Mr. Camp?

14 MR. MACLEAN: Mr. Redick will be.

15 THE COURT: You have phone duties then.

16 Other than proceeding with Mr. Camp, is
17 there anything else we need to take up?

18 MR. REDICK: No, Your Honor.

19 THE COURT: I will note for the record
20 that Monday the 16th is a federal holiday. As a general
21 rule I personally don't recognize federal holidays so I
22 will be working. So if we don't finish on Friday, I am
23 reserving the right to honor our presidents in some other
24 way on some other day. But it appears that we will be
25 finished by Friday. Because it is a federal holiday, I

1 don't have anything scheduled on that particular day. So
2 that one is open.

3 Ready to call a witness?

4 MR. REDICK: Yes, Your Honor.

5 THE COURT: All right. Who are you going
6 to call?

7 MR. REDICK: Mr. Sumter camp.

8 THE COURT: Mr. Camp.

9 (Whereupon, the witness was duly sworn.)
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EXAMINATION OF SUMTER CAMP

BY MR. REDICK:

Q. Mr. Camp, where are you presently employed?

A. Presently working for the Federal Public Defender's Office here in Nashville.

Q. You are an attorney in that office?

A. Yes.

Q. How long have you been a member of the bar of the State of Tennessee?

A. Been a member of the bar since 1982.

Q. Where were you first employed after your admission to the bar?

A. I worked for Judge Hamilton Gayden for not quite a year as law clerk and court officer.

Q. And then?

A. Then I went to work for the Metro Public Defender's Office as assistant public defender. That was in June of '83. I worked there until October of '86.

Q. What was your responsibility there?

A. Well, to represent whatever clients in whatever docket I was assigned to.

Q. What docket were you assigned to?

A. Initially assigned to the misdemeanor jail docket then the bond docket, DUI court, the criminal courts.

Before I left I was senior assistant

1 public defender in Division One Criminal Court which at
2 that time was Judge Gray.

3 Q. Did you handle all types of cases?

4 A. Yes, sir.

5 Q. You had several jury trials?

6 A. Yes, sir.

7 Q. Did you defend any death penalty cases?

8 A. No, sir.

9 Q. Where did you go after you left there in '86?

10 A. I went into private practice with the offices of
11 Lionel Barrett.

12 Q. In October of '86?

13 A. Yes, sir.

14 Q. So, shortly after that you were involved in this
15 case, is that correct?

16 A. Yes, sir. The next spring.

17 Q. If you would, there is a book of exhibits up
18 there. I will ask you to look at number 50. All of them
19 are numbered by tabs. I think the first book is one
20 through 60?

21 A. Yes.

22 Q. Look at Exhibit Number 50?

23 A. I have that.

24 Q. Tell us what that is?

25 A. That is an internal memo from Mr. Barrett to me

1 dated April 20, 1987.

2 Q. What does it say?

3 A. Sumter. Please see me on the case of James Lee
4 Jones in Fifth Circuit Court. I would like you to help
5 me try this death penalty case. End of memo. Copy to
6 Lionel R. Barrett, Junior.

7 There is a notation in my handwriting
8 7-6-87, trial on parol for murder. PH, question mark
9 which is my abbreviation for preliminary hearing.

10 The question mark indicating it was a
11 question to me whether there had been a preliminary
12 hearing.

13 Q. So this is a memo dated April 20th indicating that
14 there is a trial set on July 6th of that same year
15 which is two and a half months after this memo, is that
16 right?

17 A. Yes, sir.

18 Q. Was this the first contact you had or first
19 knowledge you had of any involvement you might have in
20 this case?

21 A. Yes, sir.

22 Q. If you would, look at Exhibit Number 54. Tell us
23 what that is.

24 A. That is another internal memo from Lionel to me
25 dated May 11, 1987. It reads, Sumter. Please see me on

1 a case named James Lee Jones. This is case I need you to
2 assist me in trial. End of note.

3 Q. There are no notes by you on this memo?

4 A. No.

5 Q. This is May 11th anticipating a July 6th trial
6 date.

7 Now it is a little less than two months
8 before the trial, is that right?

9 A. Yes.

10 Q. Are you aware of any activities that you had in
11 representation of James Lee Jones prior to this memo?

12 A. No.

13 Q. So that from the April 20th memo to the May 11th
14 memo you had no activity on the case?

15 A. No. In fact, I don't believe Mr. Barrett and I
16 had spoken about it. Which was the reason for the second
17 memo.

18 Q. So at this time then in May of 1987, describe to
19 us very briefly what was your arrangement with the firm
20 in terms of compensation?

21 A. I had a sort of highbred relationship with the
22 firm. I was both an employee and had sort of a base
23 salary. I then was entitled to a percentage of any
24 business I brought into the firm.

25 Q. Okay. So were you aware or did you become

1 aware -- at the time of this May memo were you aware
2 whether or not James Lee Jones was appointed or whether
3 Lionel was retained?

4 A. It is my understanding it was a retained case. It
5 was one of Mr. Barrett's cases.

6 Q. You didn't bring the case in?

7 A. No.

8 Q. So then you wouldn't share on any profits in the
9 case?

10 A. No, sir, I wouldn't.

11 Q. And since it is a retained case -- did you have
12 any understanding what the understanding of the retention
13 was?

14 A. I don't know that I recall the exact nature of the
15 fee. I believed the fee to be 10, \$15,000. I knew we
16 got a \$5,000 retainer but the fee was larger than that.
17 I believe at the time I came into it I was aware,
18 basically, we weren't getting any more than the
19 retainer.

20 Q. You were aware the retainer was paid?

21 A. Yes.

22 Q. Were you aware when the retainer had been paid?

23 A. No, sir. That happened prior to my getting
24 involved with the case.

25 Q. You don't have any idea how long prior?

1 A. No.

2 Q. So then you were operating under the assumption
3 the firm wouldn't be getting anymore money as a fee on
4 this case?

5 A. That is my understanding.

6 Q. So then there wasn't an opportunity for you to
7 personally earn any money on the case?

8 A. No.

9 Q. You anticipated there wouldn't be an opportunity
10 for the firm to earn more money on the case?

11 A. That is my understanding.

12 Q. Was finance a problem in the firm at this time?

13 A. Because of some earlier misappropriations by an
14 employee of the firm, Mr. Barrett had run into -- I don't
15 want to call them tax problems but owed a good bit of
16 money to the IRS.

17 He was in the process of paying that off.
18 He had some property in Williamson County, in Fairview,
19 that I am aware of on two occasions was close to being
20 auctioned at the court house steps and he had to
21 literally drive down to make payments to keep satisfying
22 this tax obligation.

23 We always had that sort of hanging over
24 our head at this time. There was some months that were
25 closer than others, yes.

1 Q. Was there any relationship based upon your
2 personal knowledge in the firm between the amount of work
3 done on the case and whether or not the fee had been
4 collected?

5 A. Most of our work we did in the firm was criminal.
6 I think it would be fair to say that until we got the fee
7 or certainly a significant part of the fee no work would
8 be begun.

9 Q. Were you aware as of May 11, '87 any work Mr.
10 Barrett had done on the case?

11 A. No, sir, I wasn't aware what happened before I got
12 into it.

13 Q. What was the relationship between you and Mr.
14 Barrett concerning the direction of the defense in this
15 case?

16 A. Well, it was Mr. Barrett's case. He was asking me
17 to assist him with it, to essentially sit second chair.

18 Q. Well, just roughly, Mr. Camp, say the first month
19 after this May 11th memo, say this is two months before
20 trial and let's suppose the month of May into June, do
21 you recall what you did on this case?

22 A. No, sir.

23 Q. Let me do this, if I may.

24 A. I mean, if it would help, Mr. Redick, my job in
25 the case was basically to do whatever Mr. Barrett asked

1 me to do.

2 Q. If you could look at Exhibit 74. Actually that is
3 a compilation of exhibits.

4 Toward the back of that compilation I
5 think is a copy of your personal calendar?

6 A. Yes.

7 Q. Portions of it from April 20th to July 16th --

8 A. Yes, sir.

9 Q. -- of 1987.

10 Could you look at that and help us
11 understand how you were spending your time from April 20
12 until --

13 A. Well, to understand, you have to understand my
14 position with the firm. I had both my own cases which I
15 was responsible, that also included some appointed
16 criminal cases. And then I had those cases which were
17 the firm's cases on which I was doing some work.

18 Then Mr. Barrett always had a large number
19 of cases and every week the members of the firm would
20 meet -- often Wednesday and Thursday evenings -- for Mr.
21 Barrett to tell us with what cases he needed help the
22 next day, and that would often mean going out of county
23 to assist him. It may mean going to several of the
24 courts here in Davidson County to mark cases ready, to
25 make announcements, maybe even to deal with the case, to

1 settle it and set it for trial or whatever.

2 So, that was our sort of standard
3 operating procedure every week; is I had my cases I had
4 to deal with, I had Mr. Barrett's cases, the firm's cases
5 I had to assist with. So --

6 Q. I don't want to spend too much time on this.

7 Scan through this calendar and identify if
8 you can where it is indicated you did any work on Mr.
9 Jones' case.

10 I think there may have been some blocks of
11 time you were even out of the state during this period of
12 time, were there not?

13 A. Yes.

14 Q. If you could identify that for us?

15 A. I am fairly satisfied, Mr. Redick, I did not do
16 anything on the case prior to May 11th. Hence Mr.
17 Barrett's second memo to me saying we need to discuss
18 this case.

19 Q. Well, then from May 11 until June --

20 A. I have a note on Wednesday, May 20, pretrial
21 conference, Fifth Circuit in the Jones' case.

22 Q. Do you have any indication in your calendar
23 that you did anything on the Jones' case prior to that
24 date?

25 A. No, sir.

- 1 Q. This is May 20?
- 2 A. Yes.
- 3 Q. And that is for a pretrial conference?
- 4 A. Yes.
- 5 Q. Do you remember the pretrial conference?
- 6 A. Yes.
- 7 Q. You attended that?
- 8 A. Yes, sir.
- 9 Q. And this was in Judge Kurtz' court?
- 10 A. Yes.
- 11 Q. Any pretrial motions taken up during that?
- 12 A. I don't recall that. I think we discussed the
- 13 motion hearing which was to follow later. I don't think
- 14 we took any motions up at that time.
- 15 Q. What is the next entry you see from your calendar
- 16 that indicates time spent on this case?
- 17 A. After May 18th?
- 18 Q. Yes.
- 19 A. It would appear to be the trial itself starting
- 20 July 6th and going the next two weeks.
- 21 Q. Nothing else in your calendar indicating or
- 22 reminding you of anything you did on this case?
- 23 A. No, sir. I know I was present in the motion
- 24 hearing but there is nothing in the calendar.
- 25 Q. When was this motion hearing, do you know?

1 A. I believe that was June 8th or 9th. I was out of
2 the office the week before. My grandmother died in
3 Florida and we went down for the funeral, which is noted
4 on the calendar. I believe it was right after I got back
5 from that.

6 Q. Do you recall, did you prepare any of those
7 pretrial motions?

8 A. No, sir.

9 Q. Do you recall any preparation that you did for
10 those motions?

11 A. No, sir. Those were essentially argued and
12 presented by Mr. Barrett.

13 Q. Now, after those motion hearings, do you recall --
14 what is the first efforts you recall making in
15 preparation for the trial of the case?

16 A. I think my involvement thereafter was, I know, in
17 trying to secure the records on the client from Middle
18 Tennessee Mental Health institute.

19 Q. And this was when? Could this have been around
20 the mid part of the month of June?

21 A. Yes, sir. My recollection was it was after the
22 motion hearing.

23 Q. We will come back to that in a minute.

24 Having sort of analyzed at least from your
25 calender your participation or lack thereof of work on

1 this case prior to the days immediately before the trial,
2 let me return to the question I asked you before.

3 Once again, did you direct any portion of
4 the defense in this case?

5 A. No, sir.

6 Q. This was Mr. Barrett's case, you testified?

7 A. Yes, sir.

8 Q. And did there come a time approaching the trial
9 date where you began to form any independent judgment
10 about the level of preparation for trial?

11 A. Yes, sir.

12 Q. And just in general terms, what was that
13 judgment?

14 A. It was my judgment we were not prepared for
15 trial.

16 Q. Did you speak to Mr. Barrett about that?

17 A. Yes, sir.

18 Q. Did you make any suggestions to Mr. Barrett?

19 A. Yes.

20 Q. Do you recall what some of the suggestions were?

21 A. Yes, sir. I was particularly concerned about
22 first mental health evidence and, secondly, the
23 investigation of the case proper.

24 It was my understanding, as I testified
25 earlier, that we had received a \$5,000 retainer some

1 months before, whenever Mr. Barrett first got involved,
2 that there was no more money forthcoming in this case,
3 that we did not have the funds to hire an independent
4 psychiatrist to do an investigation of the case to
5 gather the documents we needed to prepare for
6 mitigation, to contact family and go out of state
7 where records and witnesses were located. We didn't
8 have any of that.

9 I suggested to Mr. Barrett, urged Mr.
10 Barrett to ask the court to declare Mr. Jones -- excuse
11 me. I don't mean any disrespect to your client. That is
12 the name I knew him by.

13 Q. That is okay if you refer to him as that?

14 A. I urged him to have the court declare Mr. Jones
15 indigent.

16 Mr. Jones was incarcerated. I knew he had
17 not made lots of money in his work and certainly didn't
18 have the kind of funds or assets available to do the kind
19 of work we needed to do.

20 Q. Let me ask you, was there any doubt in your mind
21 about his indigency in terms of eligibility for
22 appointment?

23 A. No, sir. First I urged that Mr. Barrett file a
24 motion having the client declared indigent and in that
25 motion he represent to the court we were willing to stay

1 on the case as appointed counsel.

2 Since the Tennessee statute provided for
3 appointment of two counsel in a capital case, we could at
4 least both be compensated in that regard, first.

5 Secondly, both under the statute and --

6 Q. Which statute are you referring to?

7 A. I don't have the cite off the top of my head. TCA
8 title 40 statute providing for appointment of counsel and
9 other services in capital cases.

10 It would entitle us to have funds for an
11 investigator as Ake versus Oklahoma and having the client
12 declared indigent to get the investigation we needed,
13 psychiatric examinations and do the things we needed to
14 do to prepare the case.

15 MR. REDICK: Excuse me a second, Your
16 Honor.

17 Your Honor, if I could approach the
18 witness. I have a copy of the statute that he is
19 referring to. That is the only copy I have. If I could
20 hand it to the witness?

21 THE COURT: All right.

22 Q. Is this the statutes you were referring to?

23 A. Yes, sir. 40-14-207.

24 THE COURT: Is that at the time of the
25 event in question?

1 Has it been repealed, modified?

2 MR. REDICK: Your Honor, it may have been
3 added to somehow but the statute that is highlighted
4 there was the law in 1984, passed in 1984?

5 A. Judge, the indication listing of acts at the end
6 of the statute indicates it was modified. I know in my
7 own mind this highlighted portion was in effect in 1987
8 at the time of the case.

9 I was very clear we could -- the court
10 could not only appoint both of us but provide the
11 services we needed.

12 THE COURT: All right. Go ahead.

13 Q. What does the statute say?

14 A. In capital cases where the defendant has been
15 found to be indigent by the court of record having
16 jurisdiction of the case, such court in an ex parte
17 hearing may in its discretion determine that
18 investigative, or investigative services or other
19 services are necessary to insure that the constitutional
20 rights of the defendant are properly protected.

21 MR. REDICK: Your Honor, if we could mark
22 that as an exhibit.

23 THE COURT: That will be 143, I think.

24 Q. I believe, Mr. Camp, at this time there was also
25 some constitutional authority for such authorization of

1 funds via the United States Supreme Court.

2 Are you aware of that?

3 A. Ake versus Oklahoma was the law at the time of
4 this case.

5 Q. What did Ake versus Oklahoma provide?

6 A. It provided the defendant had a constitutional
7 right, indigent defendant had a constitutional right for
8 provision of the expert witnesses to assist in his
9 defense.

10 Q. I believe Ake versus Oklahoma was a case in fact
11 that involved funds for psychiatrists in a mental state
12 defendant?

13 A. In a capital case.

14 Q. And that case had been decided by 1986, had it
15 not?

16 A. Yes, sir.

17 Q. So, you had recommended to Mr. Barrett you thought
18 that indigency should be declared and the funds sought
19 and a appointment of counsel, is that correct?

20 A. Yes.

21 Q. Did you entertain any other suggestions with Mr.
22 Barrett?

23 A. We talked about what investigation needed to be
24 done. We talked about potential -- you are referring to
25 this whole period of time up prior to the trial?

1 Q. Let me withdraw that question and ask you this.

2 Did you think there was enough time to get
3 ready for trial, even assuming you had funds?

4 A. No, sir. So, part of our discussion was not just
5 what needed to be done but one of those things was that
6 we needed to move to continue the case. That would be
7 part and parcel of being appointed.

8 Had we moved to be appointed and then
9 sought funds there was no time before trial to be able to
10 do what we needed to do.

11 Q. What was Mr. Barrett's response to these
12 suggestions?

13 A. Mr. Barrett didn't respond one way or the other.
14 He didn't say he would or wouldn't. Nor did he file such
15 a motion.

16 THE COURT: Did you talk to Mr. Jones
17 about it?

18 A. No, sir, I don't believe I did.

19 THE COURT: Were you aware whether Mr.
20 Barrett talked to Mr. Jones about it, it being suggested
21 declaration of indigency, independent psychological
22 examination and a motion to continue?

23 A. I don't know whether Mr. Barrett discussed that
24 with Mr. Jones, no, sir.

25 Q. Did you see any evidence of mental or emotional

1 instability in Mr. Jones?

2 A. At what point?

3 Q. At any point. If you did, at what point?

4 A. Yes, sir, I did. Although personal observations
5 would have come at trial -- I had very little contact
6 with Mr. Jones prior to trial.

7 I had, however, reviewed the report from
8 Middle Tennessee Mental Health Institute that raised in
9 my mind several red flags indicating there were mental
10 health issues involved.

11 Q. Anything else? You referred to the Middle
12 Tennessee Health Institute.

13 Were you receiving correspondence from Mr.
14 Jones prior to trial?

15 A. Not prior to trial. I did receive several letters
16 after trial either directed to me or had gone to Mr.
17 Barrett. I did see them from Mr. Jones.

18 Q. I think you made a reference earlier to the fact
19 there was some extra jurisdictional contacts here.

20 Were you aware of institutional records in
21 Mr. Jones' past that may be relevant to this case?

22 A. Yes. I was aware that Mr. Jones had been in
23 federal custody before and it is my recollection that the
24 records from Middle Tennessee Mental Health Institute
25 referred to several custodial facilities and possibly to

1 other hospitals or mental health facilities as well.

2 Q. Did you or anyone in the office there collect his
3 military records?

4 A. No, sir.

5 Q. Did you or anyone in the office there collect his
6 employment records?

7 A. No, sir.

8 Q. Did you or anyone in the office there collect his
9 prison records?

10 A. No, sir.

11 Q. His juvenile court records?

12 A. No.

13 Q. His educational records?

14 A. No, sir.

15 Q. Any medical, psychological records?

16 A. With exception of the Middle Tennessee Mental
17 Health Institute records, no, sir.

18 Q. Did you all collect copies of the records from
19 Western State Hospital from 1964 in the state of
20 Washington?

21 A. No, sir.

22 Q. Did you collect the records from Saint Elizabeth
23 Hospital in Washington, D.C. in the early '70?

24 A. No, sir.

25 Q. Collect records of mental health, records of

1 evaluations conducted at FCI Petersburg in the early
2 '70s?

3 A. No, sir.

4 Q. Were you aware of the prior conviction in
5 1972 that played out in this trial with some
6 significance?

7 A. Yes, sir.

8 Q. Did you all obtain copies of the records of that
9 prior conviction?

10 A. No, sir. I don't know if we were provided with a
11 copy of the judgment but we certainly did not have much
12 more than that, if we had that.

13 Q. You don't know whether you had a copy of the
14 judgment?

15 A. No, sir.

16 Q. Are you aware of the psychiatric evidence
17 presented in the trial in 1972?

18 A. I understand now that there was such evidence. I
19 wasn't aware of that in 1987.

20 Q. Were you aware of the circumstances of the events
21 and prosecution and defense of the events of 1972, that
22 is the factual circumstances, apart from the mental state
23 evidence?

24 A. I knew Mr. Jones had advised he was acting in
25 self-defense in that case to protect himself from a

1 homosexual assault.

2 Q. Did you know any more than that?

3 A. No.

4 Q. Had you received any information from the
5 prosecution about the '72 case?

6 A. Yes, sir.

7 Q. What had you received?

8 A. During trial --

9 Q. Let me ask you this. Before trial did you receive
10 anything from them about the case?

11 A. Not that I am aware.

12 Q. And you started to testify that during the
13 trial --

14 A. During the trial Mr. Zimmermann advised that he
15 had an FBI agent there who would testify that this was
16 not a case of self-defense involving a homosexual
17 assault but rather that the killing was done by Mr.
18 Jones in his efforts to take over drug dealing within
19 the prison.

20 Q. And you knew nothing inconsistent with that, is
21 that true, other than what Jones told you?

22 A. Other than what we had from the client, no, sir.

23 Q. Did you interview any family members?

24 A. No, sir. Well, I spoke to his wife. I did not
25 interview any blood relatives.

1 Q. Are you aware of anyone in the firm that
2 interviewed anybody in the family?

3 A. No, sir.

4 Q. Now, Mr. Barrett has testified that either you or
5 someone may have interviewed his brother Mark Jones. Did
6 you interview Mark Jones?

7 A. I did not.

8 Q. Are you aware of anyone that did interview Mark
9 Jones?

10 A. Only other person it could have been would be Mr.
11 Swinger. I am not aware he ever spoke to him.

12 Q. Have you ever seen any notes of interviews with
13 Mr. Mark Jones?

14 A. No.

15 Q. Did you or anyone in the firm you know of
16 interview anyone that was around the crime scene, any of
17 the neighbors or anybody that was at the crime scene?

18 A. I did not.

19 Q. Are you aware of anyone that did?

20 A. I have not seen any memorandum or had discussions
21 that would lead me to believe they had.

22 Q. Are you aware of anyone that interviewed the
23 victim's brother, George Daniels, or investigated
24 anything about the victim Patrick Daniels?

25 A. No, sir.

1 Q. Are you aware of anyone that interviewed or
2 attempted to interview Norma Norman, the other victim, or
3 investigated anything about Norma Norman?

4 A. No.

5 Q. Are you aware of anyone that interviewed Devalle
6 Miller or attempted to interview Devalle Miller or
7 investigate anything about Devalle Miller?

8 A. No.

9 Q. Did you visit the crime scene?

10 A. No, sir.

11 Q. Are you aware of anyone who did visit the crime
12 scene?

13 A. Within our firm, no.

14 Q. Within your firm?

15 A. No.

16 Q. Did you view the physical evidence?

17 A. No.

18 Q. Are you aware of anyone that did view the physical
19 evidence?

20 A. No.

21 Q. When you went to trial in this case, were you
22 aware of the blood evidence in this case?

23 A. When you say blood evidence, to what are you
24 referring.

25 Q. First of all, are you aware of the extent of the

1 disbursement of blood at the crime scene?

2 A. Yes. There were photographs at the crime scene.

3 Q. You saw the photographs?

4 A. Yes.

5 Q. When did you see the photographs?

6 A. I think it was shortly before trial.

7 Q. Did you see police reports about the blood
8 splatter?

9 A. No, sir.

10 Q. Did you see any lab reports about the blood
11 splatter?

12 A. No.

13 Q. Did you see any lab reports about tests conducted
14 on Jones' clothes he had on that night concerning whether
15 there was blood splatter on the clothes?

16 A. No.

17 MR. BAKER: I don't think the testimony
18 had in this case reflects he was wearing those clothes.

19 MR. REDICK: Your Honor, the record
20 reflects that the prosecution at trial assumed he was
21 wearing those clothes, particularly the long black coat.
22 That played a very significant part in the prosecution's
23 case.

24 THE COURT: I think there is currently a
25 question of fact about some of these items.

1 We have two pairs of pants and a coat. I
2 recall some testimony he had the coat on at the scene of
3 the crime. He had pants on, but I am not sure there has
4 been any testimony about exactly what pants.

5 So, I am going to allow the question.

6 Q. Did you or anyone in your office that you are
7 aware of interview any of the witnesses on the
8 indictment?

9 A. No.

10 Q. Are you aware of any -- or did you personally
11 conduct or are you aware of any interviews conducted with
12 any -- did you hear about the Southeastern Gospel
13 Ministry?

14 A. Yes.

15 Q. What did you hear about Mr. Jones' account of
16 what led him to the crime scene and who did you hear it
17 from?

18 A. I am sure I would have heard it from Mr.
19 Barrett in our discussions that Mr. Jones had advised
20 him that there had been meetings at the Southeastern
21 Gospel Ministry which they talked about the need to
22 clean up neighborhoods and particularly drug dealers
23 and the need to instill fear in them to take back the
24 neighborhoods, and that the two guns involved, the
25 shotgun and I think the pistol that Mr. Miller had

1 were provided by members of the Southeastern Gospel
2 Ministry.

3 Q. Were you aware of who he identified as being the
4 persons that provided those weapons?

5 A. Mr. Boyd comes the mind and there was another
6 individual who was involved, sort of higher up in that
7 group.

8 I just don't recall his name right now.

9 Q. Did you ever have any personal conversation with
10 Mr. Jones about this?

11 A. No, sir, I don't believe so.

12 Q. Are you aware of any interviews you or anyone
13 in your firm conducted with Allen mired and William
14 Beard?

15 A. No, sir.

16 Q. You're not aware of any meetings with Mr. Barrett
17 and Mr. Boyd and Beard?

18 A. I am not aware of them, no.

19 Q. Did you or anyone in your firm of which you
20 are aware conduct an investigation into the 1970
21 conviction?

22 A. The prior homicide?

23 Q. No, the homicide was in '72. 1970 was aggravated
24 assault conviction.

25 A. No, sir.

1 Q. These two convictions were introduced as
2 aggravated circumstances at the sentencing of his
3 trial?

4 A. Yes.

5 Q. You are aware of that?

6 A. Yes.

7 Q. Are you aware that the 1970 conviction was a
8 conviction under the federal youth corrections act?

9 A. I understand that to be the case.

10 Q. You understand that based upon the information
11 you received after the trial or information you
12 received --

13 A. After the trial.

14 Q. Was any investigation conducted by you or anyone
15 in your firm concerning whether or not the 1970
16 conviction under the federal youth corrections act was
17 subject to expungement?

18 A. We did not have that information at the time of
19 trial.

20 Q. That issue wasn't raised at the trial, was it?

21 A. No.

22 Q. Did you have any information that Mr. Jones was --
23 in his infancy suffered extreme abuse and neglect?

24 A. No.

25 Q. No information about that at all?

1 Did you have any information that he had
2 had a previous diagnosis of a mental disease?

3 A. No, sir.

4 Q. If you would, Mr. Camp, will you look at Exhibit
5 Number 65.

6 A. Yes, sir.

7 Q. What is that?

8 A. It is a firm internal memo from me to Ed Swinger
9 who was our law clerk slash runner slash whatever needs
10 to be done person dated June 10, 1987, related to this
11 case which I am asking him to have Mr. Jones sign a
12 release so we can get a copy of the evaluation from
13 MTMHI.

14 Q. Does this mean that you did not have a copy of the
15 Middle Tennessee Mental Health evaluation prior to this
16 date?

17 A. Yes, sir.

18 Q. Are you aware of any input that you or anyone else
19 in your firm had on the conduct of that evaluation?

20 A. No, sir.

21 Q. Are you aware of any contact you or anyone in your
22 firm had prior to trial with anyone that was involved in
23 that evaluation?

24 A. No, sir.

25 Q. Did you conduct any interviews with Dr. Craddock

1 or Marshall prior to the trial of this case?

2 A. No.

3 Q. Are you aware of anyone that did?

4 A. No, sir.

5 Q. If you would, look at Exhibit Number 68. Tell us
6 what that is?

7 A. This is an order signed by Judge Kurtz dated June
8 15, 1987, providing that we would have access to a
9 complete copy of the psychiatric evaluation from Middle
10 Tennessee Mental Health Institute.

11 Q. What is the date of this order?

12 A. The order is dated June 15, 1987.

13 Q. So you have directions to your law clerk to get a
14 release from Jones for the records on June 10th and you
15 have an order from Judge Kurtz on June 15th directing
16 the release of the records.

17 So it was sometime after June 10th or
18 June 15th for either one of these avenues that you got
19 the records, is that right?

20 A. Yes.

21 Q. And this is three weeks, or less than three weeks
22 prior to trial, is that right?

23 A. Yes, sir.

24 Q. Now, were you you under the impression -- let me
25 ask this. When you retrieved the records, did you review

1 the records?

2 A. Yes.

3 Q. Did you see in those records indication that there
4 was some questions about mental problems?

5 A. Yes, sir.

6 Q. Do you recall what it was you may have seen there
7 and what it meant to you?

8 A. I don't recall exactly without that evaluation in
9 front of me.

10 I do recall it raised in my mind serious
11 questions about Mr. Jones' mental health and his history
12 of mental illness.

13 Q. Were you aware at that time of Mr. Barrett's
14 attitude about whether to present a mental state defense
15 in this case?

16 A. Yes, sir. His attitude at that time was
17 equivocal. By that I mean that he -- that that was an
18 option he was considering but it had not jelled into any
19 specific direction or use.

20 Q. Are you of the opinion that you or Mr. Barrett or
21 anyone there at the firm, based upon the information that
22 you had there before you were in any way to make an
23 assessment, whether or not you had a mental state
24 defense?

25 A. It was my opinion we did not, that we didn't have

1 enough information and that we needed an independent
2 psychological examination.

3 Q. You mentioned an independent psychological
4 evaluation. You already had this one done at the Middle
5 Tennessee Health Institute.

6 You mentioned a independent evaluation.
7 Explain that?

8 A. MTMHI was the state doctors and over the time I
9 had done criminal defense work at Metro, cases were
10 referred out to the state for work.

11 I felt we needed an expert who was not
12 beholden to the state, an expert with forensic experience
13 to examine our client, to review all records that might
14 be available as well as the social history, to give us an
15 opinion about his mental state.

16 Q. Would it have been preferable in your mind to have
17 conducted all that before any decision was made whether
18 or not to seek a mental state defense and give notice
19 that ultimately would lead to a state evaluation?

20 A. Absolutely.

21 Q. Are you by your answer assuming that in order to
22 do -- first of all, are you assuming you could have
23 obtained funds for an independent evaluation through the
24 statute you previously referred to?

25 A. Yes.

1 Q. If not from funds from private source?

2 A. Right.

3 Q. Are you assuming that in order to obtain an
4 adequate and useful evaluation for your purposes that an
5 investigation would need to be conducted prior to the
6 evaluation?

7 A. Oh, yes. We would have to have gathered the
8 information to present to our expert witness.

9 Q. Would this information, the information you are
10 referring to -- what is this information including?

11 A. It would include records of any prior
12 commitments, records of any prior mental health
13 evaluations, interviews with family members or any
14 other individual who had significant contact with Mr.
15 Jones while he was growing up, at any point in his life
16 before he saw us, before that day that could talk about
17 significant events in his life, his behavior, his state
18 of mind.

19 Q. So, how much time do you think it would take to
20 start and complete that process of collecting the
21 information and obtaining the information?

22 A. Probably months. Most of it was out of state. We
23 didn't have an investigator on staff. We didn't have an
24 investigator retained in this case.

25 It was my idea we also ask the court, in

1 addition to funds for an independent investigator -- but
2 funds for an investigator. That meant we would still
3 have to go out of state to try to get reports, contact
4 witnesses and interview witnesses.

5 Q. Were you aware of any institutional records that
6 the evaluators at Middle Tennessee Mental Health
7 Institute had on Mr. Jones other than the two page
8 interim report on an evaluation being conducted in 1970
9 at Saint Elizabeth Hospital in Washington, D.C.?

10 A. No, sir.

11 Q. Are you aware of any -- are you aware of the fact
12 that the evaluation at Middle Tennessee Mental Health
13 Institute interviewed his wife, Susie Jones?

14 A. I am not aware.

15 Q. Are you aware of any one else they interviewed?

16 A. I don't believe they interviewed anybody else.

17 Q. Are you aware of any other input they had other
18 than the input with Mr. Jones?

19 A. No, sir.

20 Q. So, when you say that you're not aware of any
21 investigation that was conducted or any interview
22 conducted of Devalle Miller, are you aware of any
23 investigation of Devalle Miller?

24 A. No.

25 Q. Are you aware of anyone in your office that

1 contacted the state of Pennsylvania where he was
2 apprehended?

3 A. No.

4 Q. Are you aware of any? Are you aware of any
5 interviews conducted of Devalle Miller's family or
6 friends?

7 A. No, sir.

8 Q. Are you aware of any interviews conducted with
9 Devalle Miller's wife's family?

10 A. No, sir.

11 Q. Are you aware that Devalle Miller's wife family
12 resided in Nashville?

13 A. No, sir.

14 Q. Did you prepare any pretrial motions?

15 A. No, sir.

16 Q. Did you have any meetings with Neal McAlpin prior
17 court in this case?

18 A. No.

19 Q. Did you retrieve any document or notes or anything
20 from Neal McAlpin's file?

21 A. No, sir.

22 Q. Did you have any meetings with the prosecution and
23 discuss this case?

24 A. No.

25 Q. Were you involved in any plea discussions?

- 1 A. No, sir. Those are all handled by Mr. Barrett.
- 2 Q. Did you interview any witnesses?
- 3 A. No, sir.
- 4 Q. Did you review any physical evidence prior to the
5 trial?
- 6 A. No, sir.
- 7 Q. Do you remember when you actually began work
8 preparing for the trial?
- 9 A. I don't have an exact recollection. My memory is
10 it was the week before when Mr. Barrett advised that
11 negotiations had broken down and the case would be tried
12 the next week.
- 13 Q. How would you describe your role in the trial of
14 the case?
- 15 A. As support for Mr. Barrett.
- 16 Q. Do you recall that you cross-examined three
17 relatively minor, I suppose, state witnesses in the guilt
18 stage of the trial, prosecution witnesses?
- 19 A. Yes, sir.
- 20 Q. Do you recall any preparation prior to trial for
21 that cross-examination?
- 22 A. No, sir.
- 23 Q. Do you recall when the decision was made that you
24 would cross-examine those witnesses?
- 25 A. No, sir. I don't believe it was made before

1 trial.

2 Q. You also examined, called as a witness in direct
3 testimony at the sentencing trial, the defendant's wife
4 Susan Bynum Jones.

5 Did you interview her prior to the
6 trial?

7 A. We had spoken. I wouldn't call it an interview,
8 no.

9 Q. What is the difference. Can you explain?

10 A. Interview of a witness before you put them on the
11 stand would be to find out everything they know about
12 what they are going to testify to.

13 We may have spoken briefly in the hall.
14 To do a lengthy in-depth interview, no that didn't
15 happen.

16 Q. Are you saying the first time you spoke to her
17 about testifying was in the hall during the trial?

18 A. Yes, sir.

19 Q. What did you understand was the theory of the
20 defense at the guilt stage of the trial?

21 A. Well, Mr. Redick, I understand theory of defense
22 to be a term of art that refers to preparation of the
23 defense that is worked into every aspect of the trial,
24 from jury selection on through jury instructions.

25 Used in that sense, I don't think there

1 was a theory of defense. There was a general strategy
2 of attempting to discredit Devalle mailer who was seen
3 as the main witness against Mr. Jones, the witness who
4 would testify that it was Mr. Jones that committed
5 the killings. Beyond that there was not a theory of
6 defense.

7 Q. What did you understand to be the theory of
8 defense at sentencing?

9 A. Beyond a general plea for mercy, I don't believe
10 there was one.

11 Q. Did the jury in this case hear anything about
12 James Jones' mental infirmities?

13 A. No, sir.

14 Q. Other than what they saw for themselves when he
15 testified?

16 A. No, sir.

17 Q. If you would, look at Exhibit Number 76. If you
18 could tell us what that is?

19 A. A motion to declare the defendant indigent. It is
20 a certificate of service dated July 9th. It is both a
21 motion and certificate signed by Mr. Barrett.

22 My secretary at the time, Cheryle Kitts,
23 signed my name to the motion, indicated by her initials
24 of C. K. after my signature.

25 Q. This is a motion prepared -- who prepared this?

1 A. I don't recall. I may have prepared the motion.

2 There is also an ex parte motion for
3 expert funds what I refer to as an Ake motion, I believe
4 I prepared.

5 Q. If you would, Mr. Camp, read paragraph four B
6 which begins at the bottom of the first page of the ex
7 parte motion for expert funds?

8 A. Quote. Because of the significance of the
9 defendant's mental condition at the time of the crime as
10 regards the outcome of these proceeding denial of access
11 to --

12 THE COURT: Slow down a bit.

13 A. Denial of access to the assistance of a clinical
14 psychologist would deny defendant the basic tools of an
15 adequate defense and thus deny defendant due process and
16 equal protection of the law under the Fourteenth and
17 Sixth Amendments to the United States Constitution and
18 Article One, Section Eight, of the Tennessee
19 Constitution, close quote.

20 Q. If you would, Mr. Camp, turn over to the affidavit
21 attached here?

22 A. There are two.

23 Q. Look at the first affidavit. Whose affidavit is
24 that?

25 A. The affidavit of Mr. Barrett.

1 Q. Look at paragraph three and read the first
2 sentence?

3 A. Quote. Since the payment of the retainer the
4 individuals involved have refused to pay the remainder
5 of the fee. Affiant's actions in the case to date as
6 well as of those of co-counsel, Sumter L. Camp have more
7 than consumed the retainer accepted in the case. Close
8 quote.

9 Q. Look over at the second affidavit. If you would
10 read paragraph four.

11 First of all, whose affidavit is this?

12 A. Also Mr. Barrett's affidavit.

13 Q. Read paragraph four.

14 A. Quote. The defendant is incarcerated and has been
15 incarcerated since his arrest in this case and it is
16 affiant's belief that he is without funds to pay the
17 remainder of the agreed upon fee in this case.

18 Only recently has it become apparent that
19 a private individual psychiatric screening is necessary
20 to adequately present Mr. Jones' defense at the
21 sentencing hearing. The records presently before the
22 court indicate the necessity for such an evaluation.
23 Close quote.

24 Q. What is the date of this affidavit?

25 A. Ninth of July.

1 Q. This was three days after jury selection had
2 begun?

3 A. Yes, sir.

4 Q. Jury selection began on July 6?

5 A. Yes.

6 Q. Was this ever filed?

7 A. Not to my knowledge.

8 THE COURT: Why not?

9 A. I don't know, sir.

10 Q. During the course of the trial, Mr. Camp, do you
11 recall any incident in the trial in which the District
12 Attorney General made some comments about Mr. Jones'
13 dress?

14 A. Yes, sir.

15 Q. What is your recollection of that?

16 A. One morning during the trial Mr. Jones came in and
17 for the first time was wearing a dycheekie, African style
18 clothing pants, a long tunic shirt, sort of gauzie
19 material.

20 Mr. Zimmermann made a comment about that
21 which Mr. Jones heard as what is this Muslim garbage. I
22 wasn't paying attention to Mr. Zimmermann. I heard him
23 say something. I didn't hear the remark myself. I heard
24 him say something.

25 Mr. Jones immediately became very agitated

1 and upset, turned to me and repeated what he heard, what
2 is this Muslim garbage.

3 I believe I passed that on to Mr. Barrett
4 and that this issue was raised. Mr. Zimmermann said he
5 said what is this Muslim garb.

6 Q. It sort of fizzled out?

7 A. Yes.

8 Q. Do you recall an incident during jury selection or
9 maybe more than one which Mr. Zimmermann requested of the
10 court that you be directed -- you and Mr. Barrett be
11 directed to turn over your jury list to the court, or to
12 the state?

13 A. Yes.

14 Q. How did you understand that situation to be?

15 A. Well, Mr. Zimmermann raised an objection to our
16 keeping the list of potential jurors. It never
17 happened in my experience in a couple dozen trials I
18 tried. Nobody ever asked for us to turn back in the jury
19 list.

20 We objected to it. Mr. Zimmermann said he
21 had concerns about this information getting out,
22 something happening to potential jurors, either knew
23 information or something more insidious.

24 Specifically I recalled mentioned
25 Southeastern Gospel Ministry.

1 Q. Wasn't there something said in chambers about what
2 information he had about the Southeastern Gospel
3 Ministry?

4 Do you recall that?

5 A. As I recall, yes.

6 Q. Do you remember him making a representation
7 about what his source of the Southeastern Gospel
8 Ministry --

9 A. It is my recollection he referred to Mr. Miller
10 and may have had another investigative source. I don't
11 recall at this time.

12 Q. Are you aware of any -- do you recall that Mr.
13 Barrett had written a letter to Mr. Zimmermann putting
14 him on notice he might be a witness for the defense on
15 the subject of the Southeastern Gospel Ministry?

16 A. Yes.

17 Q. Did you have any discussions with Mr. Barrett
18 about that?

19 A. I think he told me -- we discussed it in general
20 terms before but it would be more in the sense of
21 informing me what he was going to do. Not necessarily
22 soliciting my advice on that.

23 Q. Did you have an opinion about that strategy?

24 A. It seemed like to me a diversion from what we
25 should be doing.

1 Q. Do you recall Mr. Jones testifying?

2 A. Yes, sir.

3 Q. He was called by Mr. Barrett, was he not?

4 A. Yes, sir.

5 Q. So you were an observer for his testimony.

6 You didn't participate in his
7 examination?

8 A. That's correct.

9 Q. How would you describe his performance on the
10 witness stand?

11 A. Mr. Redick, I think I earlier described it as one
12 of the saddest things I have seen in my legal career. I
13 think that is accurate.

14 Q. Why is that?

15 A. It is my opinion that Mr. Jones was not prepared
16 to go on the stand, that because of what I perceived to
17 be his mental health problems that it would be hard for
18 him to have been successful on the stand because we had
19 not provided the factual foundation that the jury needed
20 to be able to hear this man in context, that all they
21 got was literally this man begging for his life.

22 And it was more than he could handle and
23 that he just broke down.

24 Q. Do you have doubts about whether he was capable of
25 being prepared to testify?

1 A. Yes, sir.

2 Q. Are you aware of what his account was, about how
3 this crime was committed or what he knew about it?

4 A. I don't think prior to his testifying I ever
5 discussed it with him.

6 Mr. Barrett and I had not discussed the
7 specifics of it.

8 Q. Do you recall his testimony at trial about the
9 commission of the crime?

10 A. Yes, sir.

11 Q. How would you describe his response to questions
12 about whether he was the actual assailant in the case?

13 A. I would describe him as perfunctory.

14 It was my impression at that time the jury
15 had already found him guilty of first degree murder. He
16 was facing a potential sentence of death.

17 It was my impression he was making
18 admissions that he felt had to be made at that point in
19 order to try to avoid the death penalty.

20 MR. BAKER: I object. This is
21 speculation.

22 THE COURT: I agree. Sustained.

23 Q. Are you aware at any time Mr. Jones has ever
24 recounted to you or have you heard from Mr. Barrett of
25 any time that he has ever recounted he remembered

1 committing those crimes?

2 A. No, sir.

3 Q. At the close of the direct proof from Mr. Jones on
4 page 1869 in the transcript, this question was asked of
5 him.

6 Is there anything else you would like to
7 say to the jury at this time, Mr. Jones?

8 And the court reporter indicates a pause.

9 This answer is given by Mr. Jones. It
10 appears -- this answer is given. I don't know you. You
11 don't know me. So it ain't no feeling there what you
12 should do to me.

13 What significance does that answer have
14 for you?

15 MR. BAKER: Objection. Again it calls for
16 speculation.

17 MR. REDICK: He was the attorney in the
18 case.

19 THE COURT: I will let him answer that.
20 He is now testifying to what his own view is as to what
21 he thinks Mr. Jones view is. That is why I sustained the
22 last question.

23 MR. REDICK: That is why it is offered.

24 THE COURT: Go ahead.

25 A. That statement sums up our failure in this case.

1 We did not present the information to this jury so that
2 they would know James Jones, so that in deciding whether
3 he was to live or die they would know this man, they
4 would know this human being. That was our failure.

5 It was our job to make sure that that jury
6 knew who this person was. We didn't do that and it was
7 left to him to point it out.

8 Q. Mr. Camp, look at Exhibit Number 85. Tell us what
9 that is.

10 A. It is a firm internal memo from Mr. Barrett to me
11 dated August 26, 1987.

12 Q. Could you read it.

13 A. Quote. Sumter. You will get a copy of
14 communication from James Lee Jones saying he thinks he is
15 going to get the Nobel Peace Prize.

16 I think he is probably crazy. I think we
17 should move to have him psychiatrically evaluated prior
18 to the sentencing hearing in view of the United States
19 Supreme Court decision that you cannot execute a person
20 that is crazy.

21 I also think that in the sentencing
22 provision code there is some indication that a person can
23 be psychiatrically evaluated. We need to get this done
24 as soon as possible. I would appreciate it if you
25 prepare the paperwork. End of memo.

1 Q. Was anything done in response to that memo by
2 you?

3 A. Not that I recall.

4 Q. Do you recall whether you or anyone from your firm
5 attended the sentencing hearing for Devalle Miller?

6 A. No, sir.

7 Q. Do you recall whether you or anyone from your firm
8 accepted the offer of Judge Kurtz to comment on the Rule
9 12 form?

10 A. No, sir.

11 Q. If you would, look at Exhibit Number 104. What is
12 this?

13 A. It is a letter from Mr. Jones to me dated April
14 10, 1988.

15 Q. This is 1988. This is well after the trial, is
16 that correct?

17 A. Almost to the year, yes.

18 Q. What is the gist of the letter? Can you tell
19 us?

20 A. He is complaining about our representation.

21 Q. Let me ask you to look at Exhibit Number 101.
22 Tell us what that is.

23 A. This is a letter from Mr. Jones to me dated March
24 23, 1988.

25 Q. So this is almost a year after the trial. What is

1 the gist of this letter?

2 A. Mr. Jones is again complaining about our failings,
3 that we have not done what he requested to be done.

4 Q. Look at Exhibit Number 102. What is that?

5 A. Complaint filed by Mr. Jones with the Board of
6 Professional Responsibility.

7 Q. What is the date?

8 A. March 29, 1988.

9 Q. Complaint against whom?

10 A. Appears to be both me and Mr. Barrett. It appears
11 in the body most of the objections are directed toward
12 Mr. Barrett.

13 Q. Turn over to page three?

14 A. Of that document?

15 Q. Yes.

16 A. Yes, sir.

17 Q. Look at the third full paragraph. It begins, Mr.
18 Barrett failed to seek.

19 Do you see that?

20 A. Yes.

21 Q. Read that and the next two paragraphs?

22 A. Quote. Mr. Barrett failed to seek and made no
23 point to correct the erroneous information of my past
24 convictions and also false information which played and
25 had a great affect in a prejudiced manner brought about

1 an unjusted conviction condemning me to death.

2 Mr. Barrett made at no point or serious
3 efforts to obtain available medical reports reflecting
4 past diagnoses and treatment.

5 Mr. Barrett made no serious efforts in
6 identifying leads that might be helpful in impeachment
7 nor did he ascertain facts from my point of view, nor did
8 he thoroughly search for witnesses on my behalf which I
9 had given him a list of names that had numbered 15.

10 Q. If you would, look at Exhibit Number 99?

11 A. Yes.

12 Q. What is this?

13 A. This is a copy of the motion to obtain transcripts
14 filed by Mr. Jones.

15 Q. There is a handwritten note on the top of it. Do
16 you recognize that handwriting?

17 A. There are two, it appears, one on the right and
18 one on the left.

19 Q. On the right, whose handwriting is it?

20 A. On the right is of Barbara Wise, at that time the
21 Clerk of the Fifth Circuit Court, the docket clerk.

22 Q. On the left, whose handwriting is it?

23 A. Mr. Barrett's.

24 Q. What does that note say?

25 A. Quote. To S. C., meaning me. Respond to this

1 dumb mother-fucker. L, for Lionel.

2 THE COURT: Which document number are we
3 on?

4 Q. This is 99.

5 THE COURT: I was on 98.

6 MR. REDICK: The top of the page there is
7 a handwritten note to S. C.

8 Q. Do you recall receiving this note from Mr.
9 Barrett?

10 A. Yes, sir.

11 Q. Do you recall what action if any you took in
12 response to this?

13 A. No, sir. Although it may be what prompted the
14 letters to Mr. Jones that he refers to later.

15 Q. Do you recall post trial there was a motion to
16 declare Mr. Jones indigent by Mr. Barrett?

17 A. Yes.

18 Q. Do you recall the court declared him indigent?

19 A. Yes, sir.

20 Q. Obviously acrimonious between Mr. Jones and you
21 and Mr. Barrett, is that correct?

22 A. Yes.

23 Q. Do you recall that you and Mr. Barrett filed a
24 motion to withdraw from the case?

25 A. Yes, sir.

1 Q. Do you recall that Mr. Jones filed a motion
2 requesting that you be relieved of the representation?

3 A. Yes, sir.

4 Q. And do you recall that Judge Kurtz granted the
5 motion?

6 A. Yes, sir.

7 Q. Mr. Camp, you have learned more information since
8 this trial in '87. You testified at the post conviction
9 hearing and you testified here today. You have read some
10 documents that have been developed since the trial of
11 that case about Mr. Jones and potential defenses he may
12 have had.

13 Is that true?

14 A. Yes.

15 Q. Given what you know about the representation
16 that you and Mr. Barrett provided at the trial and
17 given what you know now, do you believe that you and Mr.
18 Barrett and members of that firm adequately investigated
19 the case?

20 A. No, sir, we did not.

21 Q. Do you think that you adequately investigated
22 questions concerning whether or not Mr. Jones was the
23 actual assailant?

24 A. No, sir, we did not.

25 Q. Do you think that you adequately investigated the

1 question of that there was potential for an insanity
2 defense?

3 A. No, sir, we did not.

4 Q. Do you think you adequately investigated questions
5 concerning Mr. Jones' motivation in this case, that is
6 whether he really and truly was trying to improve the
7 community or whether this was a drug war in which he was
8 trying to take over drug territory?

9 A. No, we did not adequately do that.

10 Q. Do you think you adequately investigated the prior
11 convictions?

12 A. No, sir.

13 Q. The 1970 conviction and possibility it might have
14 been expungable?

15 Did you investigate that?

16 A. We did not adequately or otherwise.

17 Q. Do you think you adequately investigated the 1972
18 conviction?

19 A. No, sir.

20 Q. You didn't determine on your own independent basis
21 whether or not this had anything to do with a defense to
22 homosexual assault or whether it was a drug war?

23 A. No, sir.

24 Q. Do you think you adequately investigated Mr.
25 Jones' life history?

1 A. No, sir, definitely not.

2 Q. You have reviewed the social history that was
3 prepared by Dr. Diana McCoy, have you not?

4 A. Yes.

5 Q. If you had had that social history at trial, would
6 you have presented to the jury the substance of that
7 story?

8 A. Absolutely.

9 Q. Are you aware of reports in that social history
10 and in Mr. Jones' institutional records have incidents of
11 prior violence?

12 A. Yes, sir.

13 Q. Are you aware of repeated descriptions of behavior
14 that could be described as antisocial behavior?

15 A. Yes, sir.

16 Q. Yet do you still feel you would have presented
17 his story and perhaps opened the door for some of this
18 proof?

19 A. Yes, sir.

20 Q. Why would you have done that?

21 A. Because of what we did do, we didn't give the
22 jury any reason not to oppose death on James Jones. We
23 didn't explain to them how James Jones came to be in that
24 courtroom facing them. The social history does that. It
25 explains what this boy went through to become the man who

1 is in the courtroom with all of his failings, good, bad
2 and indifferent.

3 That is not to say that in any way you
4 paint the client as a saint. You take them warts and
5 all. That is what the social history does.

6 To me the social history fully prepared
7 and presented helps explain the other incidents of
8 violence along the way.

9 This is a man who as a child was treated
10 violently on a repeated basis, who was abused in a
11 horrific fashion. This comes to be about what he
12 knows.

13 Combined with the psychological profile
14 and psychiatric history that I also reviewed, I think it
15 helps the jury to understand this human being, coupled
16 with the facts in support of the self-defense in the
17 previous killing.

18 I think it makes this a much more
19 complicated issue, I think it gives the jury a lot of
20 reason to consider a life sentence.

21 Q. Do you think that the failure to investigate
22 these things and present proof about these things, do
23 you think there is a reasonable probability that it
24 affected the outcome of the case?

25 A. Yes.

1 Q. Do you think that juries in death penalty cases,
2 if they had lingering doubts about guilt, whether or not
3 he was the actual assailant or whether or not he has a
4 mental disease, do you think that carries over into the
5 sentencing hearing?

6 A. Yes.

7 Q. How would you describe that?

8 A. In terms of this case?

9 Q. In terms of this case,

10 A. Well, I think if there are concerns, lingering
11 doubts about either whether Mr. Jones was the one who
12 killed the victim as opposed to say Mr. Miller or what
13 Mr. Jones' state of mind was at that time, and I think
14 that the psychiatric record I have seen borderline
15 personality, particularly in the dissociated states that
16 are fairly well documented in the past starting as a
17 child when he slips out of himself into a dissociated
18 state, and if you look at the description of Devalle
19 Miller, what he claims to have been happening to Mr.
20 Jones there in the apartment at the time of the assaults,
21 I think it creates doubts first about his state of mind,
22 his intent, his mental functioning at the time of the
23 offense.

24 If the jury, however, were to find him
25 guilty, I think there would still be lingering doubt on

1 that issue, one, whether he did it; two, if he did it,
2 his mental state at that time.

3 I think that carries logically into the
4 sentencing phase of this case in a way that we did not
5 have in our defense of this case.

6 MR. REDICK: Excuse me just a second, Your
7 Honor.

8 Q. Mr. Camp, I failed to ask you one small thing in
9 comparison.

10 Do you remember during the jury selection
11 you and Mr. Barrett handled the jury selection together,
12 did you not?

13 A. Yes, sir.

14 Q. Do you recall whether or not he was there on the
15 last day of jury selection?

16 A. He was not.

17 Q. Do you recall that you brought to the attention of
18 the court a Batson claim that day?

19 A. Yes.

20 Q. Did you feel like you were in a position to handle
21 the duties that you had that day by yourself?

22 A. No, sir. I wasn't comfortable doing that, no.

23 Q. Why not?

24 A. Because I had not tried a capital case as lead
25 counsel. Because this was Mr. Barrett's case and because

1 he was taking the initiative on every aspect of the case,
2 including deciding what I would or would not do in the
3 case.

4 I was not comfortable with him not being
5 there that day and leaving the burden of the case and
6 particularly very important, very important challenge to
7 me.

8 Q. He was absent the entire day on the last day of
9 jury selection?

10 A. Yes, it is my recollection.

11 Q. Do you know where he was?

12 A. I believe he was in another court.

13 MR. REDICK: Your Honor, that is all the
14 questions I have.

15 THE COURT: All right. Mr. Baker.
16
17
18
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25

EXAMINATION OF SUMTER CAMP

BY MR. BAKER:

Q. Mr. Camp, prior to working for Mr. Barrett, you worked at the Metro Public Defender's Office, correct.

A. Yes.

Q. Then you worked for Mr. Barrett about two years?

A. Yes.

Q. What time period was that?

A. I was with Mr. Barrett's firm from October of '86 to September 20 or 22 of '88.

Q. And thereafter you had been employed as a Federal Public Defender?

A. Yes. At least as an assistant.

Q. And you are personally opposed to the death penalty, is that correct?

A. Yes, sir.

Q. Obviously you don't want Mr. Jones to receive the death penalty, do you?

A. No, sir.

Q. Mr. Camp, you have talked about a request for an independent psychiatric evaluation.

Now, you had one evaluation from Middle Tennessee Mental Health Institute?

A. Yes.

Q. Those results were not favorable to your client,

1 were they?

2 A. I was not happy with the results.

3 Q. And you wanted another evaluation because of that,
4 correct.

5 MR. REDICK: I am not sure he finished his
6 answer, Your Honor.

7 A. Yes, I wanted another evaluation. I felt that
8 this evaluation was not as thorough as it should have
9 been and I wanted one that had all the information that
10 could be provided.

11 Q. The law does not require the state to provide
12 indigent defendants two psychiatric evaluations, does
13 it?

14 A. No, sir.

15 MR. MACLEAN: I object to that question.
16 There is no foundation. We would oppose that
17 proposition.

18 I think Ake versus Oklahoma does allow a
19 defendant to hire his own psychiatrist.

20 THE COURT: Overruled. You asked this
21 witness whether he believed he had a right to ask for
22 this under the law. He told us what he thought Ake
23 versus Oklahoma meant. So, you opened the door to
24 explore what he understands the law to be.

25 Now recognizing that, Mr. Camp has not

8 I will allow Mr. Baker to ask him, to
9 follow up on the questions that Mr. Redick asked.

11 Q. And because you knew that the law did not entitle
12 you to a second evaluation that is the reason why that
13 motion was not filed, correct?

16 It was my belief that the examination that
17 had been conducted was not what I would characterize full
18 or fair given that they had not had access to almost none
19 of the prior records on this man.

22 A. They knew something about it. I think they had
23 two pages of a record. I don't know that they had the
24 complete document for that one occasion.

25 They certainly didn't have all the other

1 evaluations which have been conducted on this man. They
2 tried to get that information but did not receive it by
3 the time they report their report.

4 Q. At the time of this trial you didn't know what
5 other records existed?

6 A. That is true. Because we didn't make an effort
7 to secure it.

8 Q. Because of that -- that really wasn't a reason you
9 were requesting a second evaluation then. You didn't
10 even know what, if any, additional records were out
11 there?

12 A. My recollection is that the report, from the
13 report, referenced several incarcerations of Mr. Jones
14 as well as mental health evaluations or commitments. We
15 knew at least those things were out there.

16 There may have been other things with some
17 modem of investigation we could have gotten.

18 We knew those were out there and we didn't
19 get those.

20 Q. You did know this was a 30 day in-residency
21 evaluation?

22 A. I knew he was there for 30 days, yes.

23 Q. You know that at an evaluation like that that he
24 is subject to observation by staff?

25 A. At times, yes.

1 Q. And by the doctors?

2 A. Yes, sir.

3 Q. And you knew that Dr. Marshall had opined that he
4 believed the petitioner may have lied on some of his
5 testing?

6 A. I don't know if he said lied. I think he said
7 exaggerated or something to that effect.

8 Q. You didn't believe that would be helpful to your
9 client, did you?

10 A. That's correct.

11 Q. Mr. Barrett did not typically hire independent
12 investigators to do cases, did he?

13 A. That's correct, he did not.

14 Q. In fact, as in this case, he would use law
15 clerks?

16 A. Yes.

17 Q. And in this case he had Mr. Ed Swinger working on
18 the case?

19 A. Yes.

20 Q. And Mr. Swinger was assisting Mr. Barrett in the
21 investigation of the case?

22 A. I think it would be a little grand to describe Mr.
23 Swinger as an investigator. Mr. Swinger did a number of
24 things in the law firm, including picking up Mr.
25 Barrett's dry cleaning and taking his car to be cleaned

1 out.

2 He was not a trained investigator. He did
3 things Mr. Barrett asked him to do.

4 He wasn't assigned to this case as an
5 investigator nor told to do a general investigation of
6 the case.

7 Q. He wasn't a criminal investigator but he was a law
8 clerk and he knew what to investigate when Mr. Barrett
9 told him to do that, right?

10 A. He would try to do what Mr. Barrett directed him
11 to do.

12 Q. You are also aware through this petitioner that he
13 did not have close family ties, correct?

14 A. I don't know that I was aware of that.

15 Q. He had been in jail for most his adult life?

16 A. Yes.

17 Q. In fact, there were attempts to try to get his
18 brother to help in this case. Do you recall that?

19 A. Not that -- I am aware of that.

20 Q. You don't know one way or the other whether that
21 was done?

22 A. No.

23 Q. You don't know one way or the other whether there
24 were attempts to contact his parents?

25 A. I don't know that there were and if anyone made

1 that attempt, I never heard of it.

2 Q. Now, you testified before that prior to trial you
3 had about an hours personal contact with Mr. Jones, is
4 that correct?

5 | A. Yes.

6 Q. And you have testified at the post conviction
7 hearing that you and Mr. Barrett had discussed the
8 Southeastern Gospel Ministry with Mr. Jones?

| | | |
|---|----|------|
| 9 | A. | Yes. |
|---|----|------|

10 Q. And you knew before trial that petitioner had
11 claimed that the Southeastern Gospel Ministry had some
12 influence in his actions?

13 A. Yes, sir.

14 Q. And you also had known that the Southeastern
15 Gospel Ministry may have had some connection with guns,
16 correct?

| | | |
|----|----|------|
| 17 | A. | Yes. |
|----|----|------|

18 Q. Mr. Jones told you all that, correct?

19 | A. Yes.

20 Q. He had discussed those matters with you?

| | | |
|----|----|------|
| 21 | A. | Yes. |
|----|----|------|

22 Q. You had talked a little bit about an issue at
23 trial, about a concern with the jury that arose at
24 trial.

25 Do you recall talking about that in your

1 direct testimony?

2 A. A concern?

3 Q. There was a concern that some people may have some
4 influence or something with the jury?

5 A. Oh, yes. That was Mr. Zimmermann's expressed
6 concern.

7 Q. You said you were not aware of the source of Mr.
8 Zimmermann's concern.

9 Is that your testimony?

10 A. No, sir. I think my testimony was that Mr.
11 Zimmermann said that his information about Southeastern
12 Gospel Ministry came from Mr. Miller and may have also
13 come from another investigative source. I wasn't sure.

14 Q. If that other investigative source was the
15 defense, you wouldn't dispute that, would you?

16 A. I don't know what the source was.

17 Q. So if Mr. Zimmermann said it was the defense, you
18 won't dispute that?

19 A. I would be surprised. I obviously am not in a
20 position to dispute it.

21 Q. You stated you were aware of Mr. Jones'
22 allegations.

23 Certainly you would be in a position to
24 tell Mr. Zimmermann about that?

25 A. About the allegations?

1 Q. Right.

2 A. I suppose we could have, yes, sir.

3 Q. Of course, do you recall Mr. Miller testifying
4 about his source of the guns at the trial?

5 A. No.

6 Q. If the record reflects that, you wouldn't dispute
7 that?

8 A. The record is what the record is.

9 Q. You have testified that you believed that in a
10 sentencing hearing the person's life history should be
11 put out to the jury, correct?

12 A. Yes.

13 Q. And you testified you reviewed records about this
14 person's prior history?

15 A. Since that trial?

16 Q. Since the trial.

17 A. Yes.

18 Q. Of recent, I assume?

19 A. Yes.

20 Q. Those records indicate a long history of trouble
21 and violence since childhood, don't they?

22 A. Yes.

23 Q. They include sexual misconduct?

24 A. There are allegations of that, yes, sir.

25 Q. Breaking in homes, stealing female underwear?

1 A. Yes, sir.

2 Q. Fighting?

3 A. Yes, sir.

4 Q. Pulling knives on teachers and students?

5 A. Yes, sir.

6 Q. Participating in gang warfare?

7 A. I don't recall that. I recall reference to a
8 group of people that Mr. Jones was with being jumped by a
9 gang.

10 I don't recall Mr. Jones being involved in
11 gang warfare.

12 Q. Whatever is in the record, the record will
13 reflect.

14 He stated he has attempted sexual
15 intercourse with his sister; stated he attempted to kill
16 a 19 year old girl all in his youth.

17 Do you think those are really things you
18 want to put before a jury when they are trying to decide
19 whether the person has any self-worth or not?

20 A. If by comparison all the jury is going to hear the
21 man has been previously convicted of murder, yes, sir. I
22 would want to put something in there.

23 And if those -- if that life history helps
24 explain those instances along the way then I would not
25 shrink from putting that on.

1 Particularly with reference to breaking
2 into some girls' house in the middle of the night to
3 steal her underwear and, as I recall, turning on the
4 light to do so.

5 That says to me you have an individual
6 that has serious mental health issues.

7 Q. Or the resident of the house turned on the light?

8 A. My recollection was that the report showed that
9 Mr. Jones had turned on the light himself.

10 But, regardless, I think those things just
11 support the psychiatric record of the problems with this
12 person.

13 Q. And if his violence and his behavior continues at
14 age 15, aggravated assault on a taxi cab driver; age 17,
15 drunk and disorder; military record reflect numerous
16 instances of AWOL, absent without leave; indicates a
17 special court marshal for assaulting a military --

18 MR. MACLEAN: Objection. It does not
19 indicate a court marshal. I think sometimes the state
20 distorts the questions.

21 MR. BAKER: I think it reflect special
22 court marshal.

23 MR. MACLEAN: I don't believe they reflect
24 that.

25 THE COURT: I recall there is a record

1 that uses the word court marshal. I don't know if it
2 resulted in a court marshal.

3 What document are we talking about?

4 MR. BAKER: I don't have the exhibit in
5 front of me.

6 THE COURT: All right. It seems to be
7 contested. Go to your next point. You are giving a
8 laundry list.

9 Q. Ultimately he was discharged under other than
10 honorable conditions.

11 These are not favorable things, would you
12 agree?

13 A. No, I don't.

14 Q. You think they are favorable things?

15 A. I think they are consistent with the history of
16 mental illness and history of abuse this man suffered.

17 I think if you take them out of context,
18 they look like unfavorable things. If you put them in
19 the context of what this child suffered to become the man
20 who is having all these problems, I do not think
21 necessarily they are the negative things you would paint
22 them.

23 Q. These are things that otherwise would not be
24 before the jury and you're saying despite the negative
25 nature of the stuff you would still put it before the

1 jury even when they otherwise would not see it?

2 A. Yes. I think there was enough benefit in the
3 other material there that as opposed to just leaving the
4 jury with a prior murder conviction, yes, I would use
5 that.

6 Q. And his 1972 murder conviction revealed -- second
7 degree murder conviction revealed that the stabbing was
8 not in self-defense but in fact he had gone to another
9 inmate's cell armed with a knife and attacked that
10 individual because that individual had been spreading
11 homosexual rumors about him, do you believe that is
12 favorable information?

13 A. If you include the rest of the information which
14 is that this man had been raped, sexually assaulted on a
15 number of occasions previous to this; that he complained
16 to the administrative official and he sought
17 administrative segregation and he did the limited things
18 available to him in a penitentiary setting to get away
19 from that; I think if you give the jury that broader
20 picture it certainly paints a whole different story than
21 just saying he has a prior murder conviction.

22 Q. And, of course, you know you are aware of his
23 prison records and he has a long history of misconduct
24 there, lying, contraband, knives, drugs.

25 You are aware of all that, correct?

1 A. I am aware of all listed in the social history
2 about his prison record.

3 Q. And you are also aware that the mental diagnosis
4 from the prison records and prior records indicate a
5 personality disorder, not psychosis, not serious mental
6 illness but personality disorder, antisocial, schizoid
7 and maybe others?

8 Those are not the type of things that are
9 typically a juries' favorite --

10 A. I don't know that I can speak to that.

11 Q. You don't know?

12 A. He is not -- certainly not a raving lunatic. If
13 he had been, he wouldn't be competent to stand trial.

14 I think borderline personality disorder
15 are things that are certainly serious and a jury would
16 want to hear about.

17 Q. Of course, there are other records that indicate
18 he was mentally healthy, no mental illness?

19 A. There are those records.

20 Q. Did Mr. Jones ever request, to your knowledge,
21 that defendant pursue a mental defense?

22 A. What period of time?

23 Q. Prior to trial?

24 A. I am not aware he did. I had very limited contact
25 with Mr. Jones before trial.

1 Q. Did he ask you to call any family members as
2 witnesses?

3 A. Are you referring to the sentencing things?

4 Q. At the sentencing phase?

5 A. I don't recall that, no, sir.

6 Q. Did he provide you with information how to locate
7 family members?

8 A. He didn't provide that to me.

9 Again, my contact with Mr. Jones was
10 mainly during trial.

11 MR. BAKER: Your Honor, if I could hand
12 the exhibit, Defendant's Exhibit 13.

13 THE COURT: Defendant Exhibit 13.

14 Q. Mr. Camp, do you recognize that letter?

15 A. Yes, sir.

16 Q. Is that your signature at the bottom of the
17 page?

18 A. Yes, it is.

19 Q. This letter was written in response to the
20 complaints Mr. Jones had expressed to you after the
21 trial, correct?

22 A. Yes, sir.

23 Q. And the response is dated April 21, 1988?

24 A. Yes, sir.

25 Q. And in this letter you state, quote, I must object

1 in the strongest terms to your accusation that we allowed
2 a courtroom full of drug dealers to oppose you and
3 allowed your co-defendant to say in court that he feared
4 you.

5 Mr. Barrett and I worked very hard to
6 represent you and present your side of the case. We
7 cannot control what the state's witnesses say nor who a
8 opposes you, but we were certainly neither passive in
9 your defense nor in league with any of those
10 individuals.

11 Q. Do you recall telling him that?

12 A. Yes, sir.

13 Q. You do believe you worked hard on this case, is
14 that correct, during the time you were on it?

15 A. During the time I was on it, yes, sir.

16 MR. BAKER: That is all, Your Honor. I
17 move for admission of that exhibit.

18 THE COURT: All right. I have a couple
19 questions.

20 Mr. Camp, there are several sources for
21 social history. One is you can hire someone to
22 investigate and the other is you can ask the person who
23 really experienced it. I mean, if you wanted to do a
24 social history on me, you can ask me where I went to
25 school; who my family members are; have I ever been

1 arrested, et cetera, et cetera.

2 Did you or Mr. Barrett ever try to get any
3 of that information from Mr. Jones?

4 A. I did not, sir.

5 THE COURT: Do you know if Mr. Barrett
6 did?

7 A. I don't know.

8 THE COURT: Was there any kind of tactical
9 decision to either not get that information or not use
10 it?

11 A. No, sir.

12 THE COURT: Can you explain why none of
13 that was used at the sentencing phase?

14 A. It was not used, Judge, because, one, we didn't
15 know about most of it because we had not done an
16 investigation of it.

17 THE COURT: I understand you had not
18 investigated it through third sources. I recognize that
19 sometimes third parties can cast additional light and
20 additional facts on things that individuals may not be
21 able to tell you or are unwilling to tell you or
22 psychologically incapable of telling you.

23 You certainly had standing right in front
24 of you a primary source?

25 A. Yes, we did.

1 THE COURT: You have a law license. It is
2 no better or no worse than Mr. Barrett's.

3 Why didn't you do it?

4 A. This is not to my own mind a very good answer,
5 Judge. I think it accurately reflects what happened.
6 That is, I did in this case what Mr. Barrett asked me to
7 do. I was his second chair. That he would say, I want
8 you to examine this witness or I want you to prepare this
9 motion or whatever, that may have been. I did what he
10 asked me to do.

11 He never asked me to interview Mr. Jones
12 about his social history; he never asked me to try to
13 find family members to corroborate whatever information
14 he may have given us. I was never asked to do those
15 things.

16 I understand that sounds pallid at this
17 point in time in light of what happened to Mr. Jones. It
18 wasn't my part of the case.

19 THE COURT: Did you ever have any
20 discussion with Mr. Barrett about the source of the funds
21 for the retainer?

22 A. No, sir, I don't believe I did.

23 THE COURT: I am not sure I fully
24 understand why a motion to declare Mr. Jones indigent was
25 prepared, signed and by all appearances ready to be filed

1 and never was filed either during the course of the trial
2 or before trial. I understand the date. It was during
3 the middle of the jury selection.

4 Who made the decision not to file it and
5 why was that decision made?

6 A. The decision to file or not to file it would have
7 been made by Mr. Barrett. I don't know why it was not
8 filed.

9 In my opinion it would have been too late
10 to file it in the middle of the trial. I don't know why
11 it was not filed.

12 THE COURT: Why didn't you put on any
13 mental health testimony at sentencing?

14 A. Because we hadn't done a adequate investigation or
15 preparation of that issue.

16 THE COURT: Why didn't you get the
17 independent psychological evaluation?

18 A. Because he we didn't have the funds to do that on
19 our own and for whatever reason Mr. Barrett was unwilling
20 to ask the court for those funds.

21 THE COURT: How come you didn't get Mr.
22 McAlpin's file or talk to him?

23 A. Again, that was not among the things Mr. Barrett
24 asked me to do.

25 THE COURT: Did you ever talk to Allen

1 Boyd or William Beard?

2 A. I did not, no, sir. I may have seen them in the
3 office or spoken to them. I don't know, Judge.

4 In terms of having any kind of substantive
5 conversation, I did not.

6 THE COURT: You were asked to put Mr.
7 Jones' wife on the stand at sentencing, right?

8 A. Yes.

9 THE COURT: When were you asked to do
10 that?

11 A. Probably right before then.

12 Q. Do you have any idea what she was going to say in
13 response to your questions?

14 A. Yes, sir. We had talked generally about her
15 relationship with Mr. Jones, in general terms of what she
16 could say.

17 THE COURT: Any inside as to why Mr.
18 Barrett would call his own client a dumb mother-fucker in
19 writing to you?

20 A. I can speculate, Judge. It was Mr. Barrett's
21 frustration with Mr. Jones' letters complaining about his
22 case, particularly about trying to get the transcript of
23 which we only had one copy prior to the appeal or brief
24 being filed.

25 THE COURT: How many death penalty cases

1 have you done?

2 A. I have been involved with Mr. Jones' case and the
3 post conviction of Eddie Hartman's case.

4 THE COURT: Is that before or after the
5 Jones' trial?

6 A. After. I have been involved in none prior to the
7 Jones' trial.

8 THE COURT: The Tennessee Court of Appeals
9 has called you ineffective.

10 My impression of you and of Mr. Barrett in
11 the legal community by reputation is that you are both
12 well respected.

13 How do you evaluate your own performance
14 in this case?

15 Do you agree with the court of appeals?

16 A. Yes.

17 THE COURT: You do?

18 A. Yes, sir.

19 THE COURT: Did you ever interview Gail
20 Hughes Mann?

21 A. No, sir.

22 THE COURT: Did you participate in the
23 discussions with Mr. Zimmermann and Mr. Delagrang
24 about the circumstances of the murder in the federal
25 penitentiary?

1 A. No, sir.

2 MR. BAKER: Delagrange was the FBI
3 agent.

4 THE COURT: Mr. Barrett wrote you a
5 memo that you -- he believed you were going to get on
6 some kind of communication that Mr. Jones was probably
7 going to get the Nobel Peace Prize and he was probably
8 crazy.

9 Why didn't you follow up with that?

10 That was a task that Mr. Barrett
11 apparently assigned to you?

12 A. Yes, it was. I looked for any work following that
13 and haven't found any.

14 Those -- basically after the death
15 sentence was imposed, I was essentially out of the case.
16 Mr. Barrett brought me in to help him try the case. I
17 don't think I had any involvement in the sentencing on
18 the assault with intent matter.

19 I believe I prepared the motion for a new
20 trial but that was because I was keeping notes during the
21 trial of objections raised as to those matters. And so I
22 had those in my file.

23 I am sure that Mr. Barrett and I at least
24 discussed this matter. It does not appear we acted on
25 it. I can't tell the court why not.

1 THE COURT: Most of your answers to my
2 questions were essentially that wasn't my job; I only did
3 what I was told.

4 Here is an example of what you were told
5 to do and now you are telling me you didn't do it. Have
6 I got it right?

7 A. It appears that no motion was filed to that
8 effect. I am sure that Mr. Barrett and I discussed it.
9 I certainly wouldn't have ignored such communication from
10 Mr. Barrett or request from him.

11 Ultimately whether or not anything was
12 filed or whether any action would be taken would have
13 been Mr. Barrett's decision, certainly after we had
14 discussed it.

15 THE COURT: Was it a tactical decision
16 not to do it or did you all just didn't get around to
17 it?

18 A. I don't believe it was a tactical decision, Judge.
19 I can't say what that tactic would be.

20 THE COURT: Your client was sentenced
21 to death but you can't remember why you didn't try to
22 have him declared -- in the words of memo -- declared
23 crazy?

24 A. Well, that was an evaluation I had sought and
25 urged prior to trial and that didn't go anywhere. Why it

1 didn't go anywhere after trial, I can't tell the court at
2 this time.

3 THE COURT: All right. Anybody want to
4 follow-up on any of that?

5 MR. BAKER: No, Your Honor.

6 MR. REDICK: I have no questions.

7 THE COURT: You may step down, Mr. Camp.
8 Thank you.

9 MR. MACLEAN: Your Honor, I have just
10 greeted Ms. Lancaster briefly. I would like to spend a
11 little time with her. She just came up from Atlanta this
12 morning.

13 With the Court's permission, I would
14 request a little break now.

15 THE COURT: All right. I will give you an
16 opportunity to have lunch with her.

17 MR. MACLEAN: That would be great.

18 THE COURT: We will do sort of all that at
19 once. We could reassemble about 12:45. That will give
20 you enough time?

21 MR. MACLEAN: Yes, that will be plenty.

22 To bring Your Honor up-to-date, I left a
23 message with Mr. Dinkins' office. They told me he was
24 in court and would be back around the noon hour. I asked
25 him to leave a message, and I left the message we wanted

1 him to testify this afternoon if at all possible. I will
2 follow-up during the noon hour.

3 THE COURT: I will ask Mr. Noles who is
4 here substituting for Ms. Bush, who is out sick, to call
5 Mr. Dinkins' office and leave a message that his presence
6 is requested this afternoon unless his current trial
7 makes that impossible.

8 MR. MACLEAN: Thank you, Your Honor.

9 THE COURT: So he will know that I am
10 interested in him appearing.

11 MR. CAMP: Judge, am I released?

12 THE COURT: Anybody going to recall this
13 witness?

14 MR. BAKER: We are not, Your Honor.

15 MR. REDICK: No, sir.

16 THE COURT: Thank you. We are in
17 recess.

18 (Whereupon, the Court was in recess.)

19 THE COURT: I want to make everyone aware
20 of a communication that our office has had with Mr.
21 Dinkins. You may have additional information.

22 Mr. Noles informs me that Mr. Dinkins
23 called and expressed it some concern about the inability
24 to be here this afternoon, wanting to know if Friday
25 morning was okay.

1 I instructed Mr. Noles to tell him that
2 Friday morning was too late and we would have further
3 discussions here. Mr. Dinkins will be calling back in
4 some fashion this afternoon.

5 That is where it stands. Has anybody else
6 talked to him?

7 MR. BAKER: No, Your Honor.

8 MR. REDICK: I just got off the phone with
9 him. That is pretty much what he told me. He was trying
10 to talk to the opposition counsel in his trial to get an
11 assessment and he was going to call your office back.

12 THE COURT: All right. My problem with
13 Friday is that we certainly have a full morning, if not
14 more for the petitioner and then Mr. Baker said he is
15 going to call some people and that needs to be done after
16 he completed what you have to put on.

17 So unless you can tell me his testimony
18 will be very short then I think Friday we have a pretty
19 full day. We will see how that plays out.

20 Anything else about any other witnesses
21 before we put on Ms. Lancaster?

22 MR. BAKER: No, Your Honor.

23 MR. REDICK: Your Honor, if I could just
24 mention now, since the court asked, do you want to talk
25 about Gail Hughes Mann at another time? I mean, that is

1 still a question in my mind.

2 THE COURT: Now is a good time if you want
3 to bring anything to my attention.

4 MR. REDICK: Well, I guess I don't have
5 any information to give to the court except to say that
6 we would like to have an opportunity for at least the
7 court to examine her, if not us, about this at some
8 time.

9 THE COURT: I would like to have an
10 opportunity to do that as well as soon as we can locate
11 here. I inquired through my staff with the Marshal's
12 Service yesterday if they had any further information
13 as to her whereabouts. I did not have any new
14 information.

15 The difficulty at the moment is, as I
16 understand the facts, she was notified by telephone that
17 a subpoena had been issued for her and that she needed to
18 be in depositions. She didn't show up for those
19 depositions.

20 That caused what we are all familiar with,
21 an order ordering the Marshals to begin personally
22 serving her and she has been unable to be located. At
23 least the representations to me have been that there is
24 the appearance she has left town.

25 I don't know that to be a fact. That is

1 at least a possibility. I don't mean necessarily she has
2 moved out of town. She is just not presently in town. I
3 guess there is a possibility she may have moved. I don't
4 know.

5 Other than me asking the Marshals to
6 continue their efforts, there is not a lot I can do.

7 I am uncomfortable at this point ordering
8 anything further than that she be served, because having
9 not been actually served with the trial subpoena makes
10 contempt proceedings a little cloudy as to whether she
11 actually has been ordered by the court, if she hasn't
12 been served.

13 Maybe a telephone call from the Marshals
14 is enough but it makes it a little fuzzy.

15 At the time she is located it is my
16 intention to bring her here, certainly give the parties
17 an opportunity to say what they want to say and attempt
18 to examine her, if appropriate. If she is unwilling to
19 talk before others, I may do an initial in camera to find
20 out what the basis is and if it has any foundation. And
21 before any of that happens, if she is unable to retain
22 counsel, I may order the Federal Public Defender's Office
23 to represent her, depending on the whole status of
24 things.

25 If she disregards the orders of the court

1 and those orders have been received by her, I will
2 definitely appoint counsel if she needs counsel and if
3 she is found to have violated the order of court and
4 still won't talk, she runs the risk of being held in
5 contempt and incarcerated until she talks.

6 That is how I would conceive it plays out
7 in the most negative way.

8 The most positive way, she would tell us
9 what she knows, if anything.

10 What I will ask Mr. Noles to do after we
11 get the witness on the stand and have some discussions is
12 I am going to ask him to invite a representative of the
13 Marshal's Service down here to join us. Mr. Luke Wehby,
14 if he is available, will probably be the individual we
15 need to talk to.

16 And we will place on the record what the
17 status of the matter is.

18 While we are at that, in the event she
19 can't be located, the parties need to be thinking
20 through what legal presumptions, if any, apply to the
21 testimony of witnesses who appear to be evading process.
22 Those presumptions may be different than in a criminal
23 case and civil case. I am not sure what the presumptions
24 would be in a habeas corpus case, which is really civil,
25 dealing with criminal matters.

1 I don't know the answer to that. There
2 may be appropriate presumptions.

3 Along that line, we have had two
4 witnesses that have taken the Fifth Amendment privilege.
5 My vague recollection -- although certainly not something
6 I see as a matter of course in civil proceedings --
7 witnesses who take the Fifth Amendment, that certain
8 presumptions arise. It is different than in criminal
9 proceedings.

10 That may affect or may not affect the
11 Court's evaluation of the evidence. Certainly I am very
12 interested why someone would leave town, if she left
13 town, rather than testify.

14 I am very interested where people take
15 the Fifth Amendment, and if there are presumptions to be
16 made, I would like to know what those presumptions are.

17 While I am what you are probably thinking
18 rambling, at least I think I am giving you my views on
19 these matters.

20 We have had a number of witnesses talk
21 about ineffective assistance of counsel.

22 Mr. Dinkins, I assume, is going to be
23 called in part on that issue. And Mr. Dinkins, as I
24 recall, was part of the original direct appeal. And
25 then, I guess, one reading of the record is contrary to

1 his wishes. In any event, he continued on in the post
2 conviction proceeding in some fashion.

3 And there are a whole lot of things that
4 transpired in that regard with other lawyers, Mr. Morrow
5 and Mr. Shullman.

6 And as I have said at least once before,
7 the Tennessee Court of Criminal Appeals on post
8 conviction found ineffective assistance of counsel, found
9 it didn't rise to the level of constitutional error.
10 Those are my words. They essentially said it is
11 harmless.

12 And recognizing that in certain
13 circumstances I may be bound by certain findings of fact,
14 I am certainly not, as I understand it, bound by
15 conclusions of law, but the court has to balance issues
16 of comity between federal and state courts how to defer
17 or not defer to factual and legal findings.

18 I am not going to try to form an opinion
19 right here exactly now what the law is other than to say
20 those are areas of concern.

21 And having now expressed those areas of
22 concern, one thing that will be of interest to me and I
23 will go ahead and tell you so you don't have to guess
24 what I am thinking, is what is different in this
25 proceeding than in any prior proceedings? What is it

1 that is new? What evidence is first coming forth in this
2 proceeding that neither the post conviction court nor
3 the district appeals court had any opportunity to
4 consider?

5 That matter is one of many, many, many
6 factors that I will be looking at. I guess it is
7 possible I could look at what the prior courts have
8 done and just say I disagree or I can look at them and
9 say I agree or I could look at them and say I agree but
10 here is some other stuff that popped up for the first
11 time and then I would have to decide whether that
12 matters or doesn't matter, whether it changes something
13 or doesn't.

14 But it is unclear to me at this point how
15 much of this voluminous material I have been presented
16 with is breaking news. And in terms of formulating
17 either your questions or what you may want to file or not
18 file post trial -- and we will talk about that later --
19 that is at least one area I am having a little confusion
20 about.

21 I understand pretty clearly what Mr. Camp
22 and Mr. Barrett had or didn't have. But I am a little
23 confused about what others in the process may have or may
24 not have had, and accordingly what was available to the
25 other courts or not available.

1 I am not suggesting that this is the only
2 thing I am interested in but it occurred during Mr.
3 Camp's testimony that I have a little confusion about why
4 is this different than what has gone on before, or am I
5 simply reconsidering what has already been considered?

6 The grand scheme of all the facts, all the
7 law about what -- who I am to defer and what, if I do,
8 that is a factor whether somebody saw it before or had an
9 opportunity to see it.

10 Mr. Redick.

11 MR. REDICK: Your Honor, we will address
12 this in the post hearing briefs. I wanted to say in a
13 nutshell what our position is.

14 THE COURT: Okay.

15 MR. REDICK: The question about whether
16 there was full and fair hearing at this point has to do
17 with the presumption of fairness. The presumption of
18 fairness has to do only with the presumption of fairness
19 as to historical facts.

20 The question of ineffective assistance of
21 counsel is a legal question applied to facts, which is a
22 mixed question of fact and law and which is a de novo
23 determination by this court.

24 This court has elected to hold an
25 evidentiary hearing. So, I think we are in a situation

1 right now -- because that is a mixed question of fact and
2 law -- that this court makes its determination on
3 ineffective assistance of counsel based upon the record
4 in this court and that alone. It is a de novo
5 determination.

6 THE COURT: All right. Mr. Baker.

7 MR. BAKER: I will give my summary.

8 THE COURT: Okay.

9 MR. BAKER: Of course the state's
10 position, I think has been gone over before, is that
11 petitioner's is required to full and fairly present his
12 claims to the state court's satisfaction of the
13 exhaustion requirement.

14 When he has not done that and presents new
15 materials to the federal court, he has failed to exhaust.
16 If he no longer has a state remedy it is procedurally
17 defaulted.

18 In a very brief nutshell, that is the
19 state's position. We also believe he did have a full
20 and fair opportunity to present his claims in state court
21 and state court findings are binding with regard to the
22 case.

23 THE COURT: All right. I understand your
24 legal positions. I still admit to some confusion about
25 the chronology of the developments of the facts and in a

1 word what is new. It may turn out not to matter. If
2 there is a complete de novo review, it doesn't matter.
3 If not, under whatever particular claim we are looking at
4 then we get into these other issues. It is just not
5 clear to me where it all fits together.

6 We have a visitor we might want to take
7 up.

8 MR. PRISE: If I may approach, Your
9 Honor?

10 I am Floyd Price.

11 THE COURT: Yes, Mr. Price. You are
12 welcome to just observe. You looked like you wanted to
13 speak. I want to see what you have on your mind.

14 MR. PRICE: Yes. There were two phone
15 calls to our office, I believe one from Mr. Redick and
16 the court regarding Mr. Dinkins, my law partner.

17 I wanted to provide the court some
18 information and communicate back with Mr. Dinkins with
19 respect to his appearance before Your Honor this
20 afternoon.

21 THE COURT: I am listening.

22 MR. PRICE: Mr. Dinkins is in trial in the
23 First Circuit court in Davidson County on medical
24 malpractice case and has been for the past week and a
25 half.

1 It is my understanding that he is
2 scheduled to be doing the examination of the witnesses,
3 of all the witnesses that are testifying this afternoon.

4 I just wanted to provide that information
5 to the court to see if it was necessary for his
6 appearance for testimony, when the court would want him
7 here and so he could properly deal with the matters he
8 has over in state court.

9 THE COURT: The nutshell is, I would like
10 him here as soon as possible. I wanted to make every
11 effort to accommodate his trial schedule, so I am not
12 pressing to have him drop his business this afternoon and
13 come here.

14 I would very much like him to appear
15 tomorrow if there is anyway he could do that. If we get
16 pushed over to Friday then I am going to keep everyone in
17 this courtroom here on Saturday or Monday, and Mr.
18 Dinkins will be here Saturday or Monday.

19 I guess in a nutshell that is it. I am
20 expecting otherwise a full day on Friday. It is
21 conceivable we could fit him in on Friday but it looks
22 close. I am very anxious to get his testimony on before
23 the beginning of next week.

24 Now, I am willing to work with you. I
25 don't want to be heavy handed. I want to respect other

1 courts doing other work. But if possible it would be
2 helpful if he could appear late tomorrow afternoon
3 perhaps.

4 Mr. Redick, Mr. MacLean, does that work
5 for you?

6 MR. REDICK: Whatever the court wishes.
7 It looks like we have time this afternoon. If he can't
8 come this afternoon, we can't do it. Both tomorrow and
9 Friday may be relatively full.

10 THE COURT: I would like to have him this
11 afternoon. If he is examining witnesses -- maybe I
12 misunderstood.

13 I understood that there had been some
14 discussion with the state trial court that the court was
15 aware he needed to appear in this proceeding and there
16 would be some way to work some of that out. I am getting
17 sort of a different message from you.

18 MR. REDICK: Mr. Price may not know both
19 of us talked to him five minutes ago.

20 MR. PRICE: I apologize.

21 MR. REDICK: He is supposed to get back to
22 the Court this afternoon.

23 THE COURT: Yes, my understanding was he
24 was supposed to get back but what Mr. Price is telling me
25 he is going to be examining witnesses all afternoon.

1 MR. REDICK: He reported that to me as
2 well. He would see what was possible and report back.

3 THE COURT: Well, the examining witness
4 part was at least news to me.

5 What are you proposing, Mr. Price?

6 MR. PRICE: When I left the office, I
7 didn't know how long the court was going to be in session
8 today and I didn't know the extent to which Mr. Redick
9 would be examining Mr. Dinkins.

10 But I thought that if he could appear late
11 this afternoon then that might be one remedy for the
12 situation.

13 THE COURT: Yes, I think that is perhaps
14 the best remedy, unless somebody has an objection to
15 that.

16 I must have misunderstand when you said he
17 was examining witnesses this afternoon. I assumed he was
18 going all day.

19 MR. PRICE: He was but one of the things I
20 said, I would just suggest to the Court if he could
21 appear here maybe 4:15 or so for the beginning of his
22 examination, that that might allow him to do the bulk of
23 what he needs to do this afternoon and the state court
24 could probably adjourn, based upon my knowledge of the
25 witnesses that are left in that case.

1 THE COURT: Does that work with the
2 lawyers?

3 MR. BAKER: That is fine with us, Your
4 Honor.

5 MR. REDICK: Fine with me, Your Honor.

6 THE COURT: If he could work it out to be
7 hear about 4:15, that would be preferable.

8 Thursday and Friday are really very full
9 days and not that this is any of your concern but I
10 think I have been pushing these lawyers modestly hard to
11 present their case.

12 Mr. Dinkins is an important piece of the
13 case. We would like to have him this afternoon if
14 possible. So around 4:15 would be fine. I know you have
15 to talk to him.

16 I suspect Judge Gayden may have some views
17 about that. If they are strongly held then certainly I
18 will take those into account.

19 MR. PRICE: I will let Mr. Dinkins know.
20 Thank you, Your Honor.

21 THE COURT: I appreciate you coming over
22 and enlightening us.

23 MR. PRICE: Thank you. I had to be here
24 for other business but I wanted to stop by to let the
25 Court know where we are.

1 THE COURT: I didn't know you had more
2 than one case. Thank you, Mr. Price.

3 We need a witness.

4 MR. MACLEAN: Your Honor, I would like to
5 call Ms. Nancy Lancaster, please.

6 THE COURT: If you will step up here and
7 raise your right hand, please.

8 (Whereupon, the witness was duly sworn.)
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EXAMINATION OF NANCY LANCASTER

BY MR. MACLEAN:

Q. Do you need any water or anything like that?

Mrs. Lancaster, where do you live?

A. 800 Tranquil Drive in Austell, Georgia.

Q. Is that near Atlanta?

A. Suburb.

Q. What is your occupation?

A. Research assistant with a consulting firm called
Frye Consultants in Atlanta.

Q. You also have a family at home?

A. Yes.

Q. Pretty big family now?

A. Pretty large.

Q. What is your relationship to James Jones?

A. He is my half brother.

Q. You call him Jimmy?

A. Yes, I do.

THE COURT: Pull the microphone down a
little for her, at least closer. I think that might help
some.

Go ahead.

Q. You and Jimmy share a common mother, is that
correct?

A. Yes, we do.

1 Q. What is her name?

2 A. Jessie Burns Jones.

3 Q. Could you describe your family briefly, how many
4 siblings, full siblings do you have?

5 A. I had two brothers. One is deceased and one is
6 still alive.

7 Q. What are their names?

8 A. Charlie Perry and the other one is Willie Pete
9 Burnett, Junior.

10 Q. Can you tell the court about your early
11 relationship with your mother was from the time you were
12 born?

13 A. I didn't have one. I was abandoned when I was
14 nine months old.

15 Q. Do you know how you were abandoned?

16 A. Yes. It was three of us, as I said, and my mother
17 got a taxi to take us into some bushes and leave us
18 there. And the taxi took her back to wherever she went.
19 And then he came and retrieved us and took us to the
20 Department of Family and Children Services.

21 Q. From that point on, how were you raised?

22 A. From one foster home to another.

23 Q. Do you know how old you are?

24 A. Not really.

25 Q. Do you know approximately how old you are?

1 A. From what we can gather, my brother and myself, I
2 am between 52 and 54. I am not sure.

3 Q. When was the first time that you saw your mother
4 Jessie?

5 A. I was 12 years old and I stumbled upon her.

6 Q. Can you tell the Court how that occurred?

7 A. I was on my way to the neighborhood store and she
8 was standing in front of my grandmother's house.

9 I knew who she was by how she looked. I
10 looked exactly like her.

11 Q. What transpired when you met her that time?

12 A. She approached me and she called me her baby. I
13 replied by saying, don't touch me.

14 THE COURT: One moment. Mr. Dinkins is on
15 the phone. He thinks that 4:15 would be pushing it.

16 How about 8 a.m. on Thursday?

17 MR. MACLEAN: Your Honor, I might have to
18 consult with Mr. Redick. Our concern is that is really
19 going to push the day.

20 THE COURT: Tell him no.

21 MR. MACLEAN: I am sorry.

22 THE COURT: That is all right with me.

23 Q. What happened following that encounter with your
24 mother?

25 A. I didn't see her again for many years.

1 Q. Do you remember the next time you saw her?

2 A. The next time I saw her, I was already married and
3 I was visiting my sick grandmother.

4 Q. Could you tell us about your genetic background.
5 What I mean by that, your ancestors.

6 Are you black, are you Indian? What is
7 your ethnic background?

8 A. My ethnic background is Cherokee and Caucasian.
9 My father was full blooded Cherokee so, of course, was
10 his parents.

11 And my mother's side, her mother is
12 Cherokee and her father is half Cherokee and half
13 Caucasian.

14 Q. When you were growing up as a child, did you know
15 your relatives?

16 A. I knew of them but I didn't know them. People
17 would point them out to me.

18 Q. Did you grow up among people who were of Cherokee
19 ancestry?

20 A. Some of them were.

21 Q. What was the attitude among the Cherokee people
22 that you grew up with toward blacks?

23 A. We were not supposed to associate with them.

24 Q. Were you told anything about dating blacks?

25 A. I was not allowed to.

1 Q. Do you remember -- tell the court about Jimmy's
2 family, his siblings.

3 How many siblings does he have?

4 A. He has a brother and sister, full brother and full
5 sister.

6 Q. And where does he rank in birth order among those
7 three?

8 A. The eldest.

9 Q. What is the sister's name?

10 A. Sylvia. Sylvia Wilson.

11 Q. How much younger is she than James?

12 A. I think she is two years. I am not real sure on
13 that. I think she is two years.

14 Q. James is 47 right now. And then the youngest of
15 the three, what is his name?

16 A. Mark. Mark Jones.

17 Q. How much younger is he than Jimmy and Sylvia?

18 A. It was five or six years between them.

19 Q. Do you remember the first time you met James and
20 Sylvia and Mark?

21 A. The first time I met Sylvia, she was 13 years old.
22 I had to be in my early 20s.

23 I met her at my grandmother's at the same
24 time my grandmother was ill.

25 Q. Where did you grow up? What part of the

1 country?

2 A. I grew up some in North Carolina, some in
3 Pennsylvania.

4 Q. Where was this that you met Sylvia?

5 A. In North Carolina.

6 Q. Was she with her mother when you met?

7 A. Yes. They had travelled from, I think, Spokane,
8 Washington to be with her ill mother. She brought Sylvia
9 with her.

10 Q. How old were you again?

11 A. Early 20s. Again, I don't know how old I am.

12 Q. Was that the first time you met your mother after
13 that earlier encounter?

14 A. As far as I remember. I don't remember seeing her
15 in between then.

16 Q. How long did you see Sylvia at that point in
17 time?

18 A. We were in the same house for a couple weeks.

19 Q. With your mother?

20 A. Yes. Among other relatives.

21 Q. That was the first time you had had any extended
22 time with your mother Jessie?

23 A. Yes.

24 Q. You met Mark or Jimmy by that time?

25 A. No.

1 Q. Did you know about them?

2 A. I had heard mention of them. I didn't know about
3 them per se. Just hearing people talk.

4 Q. When Jessie and Sylvia were in the house with you
5 for a couple weeks in North Carolina, did Jessie ever
6 talk about Jimmy or Mark?

7 A. No, she didn't.

8 Q. Did she tell you that -- did she act toward you
9 like a mother?

10 A. No, she did not.

11 Q. How did she act toward you?

12 A. She acted as if she was a visitor there and just
13 met this young woman and asking this young woman a lot of
14 questions.

15 Q. Do you know where Sylvia is today?

16 A. Not exactly. The last I heard she was in the
17 state of Texas. But I am not sure.

18 Q. Have you asked Jessie, your mother, where Sylvia
19 is?

20 A. Yes. I have on many occasions.

21 Q. What does she say?

22 A. She doesn't know. As far as she knows she could
23 be dead.

24 Q. Where is Mark today?

25 A. He is deceased.

- 1 Q. When did he die?
- 2 A. July 13, 1996.
- 3 Q. What was the cause of his death?
- 4 A. He committed suicide.
- 5 Q. Now, going through the family tree, did Mark have
- 6 any children?
- 7 A. Yes, he did.
- 8 Q. How many children?
- 9 A. Ten.
- 10 Q. Ten children?
- 11 A. Yes.
- 12 Q. Did Sylvia have any children?
- 13 A. Yes, she did.
- 14 Q. How many children?
- 15 A. Three.
- 16 Q. Who is the first child by Sylvia?
- 17 A. Helen.
- 18 Q. How old was Sylvia when she had Helen, do you
- 19 know?
- 20 A. She had to be between 15 and 16.
- 21 Q. And where was she living at the time?
- 22 A. She was living in Philadelphia.
- 23 Q. Was she living with Jessie and her father?
- 24 A. Yes.
- 25 Q. Her father is James, Senior, correct?

1 A. Yes.

2 Q. The same father as Jimmy Jones?

3 A. Yes.

4 Q. Tell the court what you know about Sylvia's having
5 Helen as a child, as a baby. What happened?

6 A. She gave birth to Helen and she didn't get to take
7 the baby home from the hospital.

8 My stepfather and my mother took the baby
9 home and asked her to sign away her rights to the child.
10 She was not to have anything to do with the child. They
11 did raise the child until she became an adult.

12 Helen found out when she was six or seven
13 years old with an argument with Sylvia that Sylvia was in
14 fact her mother.

15 Q. Helen didn't know?

16 A. She didn't know. She didn't know who I was. She
17 didn't know how Sylvia fit or I fit.

18 Q. Did Helen grow up in the same house with Sylvia
19 during the first couple years of her life?

20 A. Yes.

21 Q. She was growing up in the same house as Sylvia and
22 didn't know she was her mother?

23 A. Exactly.

24 Q. Is there a thought among the family about who the
25 father of Sylvia's child might be?

1 A. The thought of the family, the gossip, if you
2 will, says that James, Senior was the father of the
3 child.

4 Q. Has there been any other person that has been
5 identified as the possible father for Helen?

6 A. It's not to my knowledge.

7 Q. Now, do you know how Mark and James learned about
8 you?

9 A. I am not sure how Jimmy learned about me. I know
10 Mark told me himself that he learned about me from
11 overhearing an argument between Sylvia and my mother.
12 The gist of the argument was my mother wanted Sylvia to
13 stay quiet of the fact that I existed.

14 Q. When was the first time you saw Mark and Jimmy?

15 A. 1965.

16 Q. How did that happen?

17 A. I was visiting at my aunt's house, and stepfather
18 had retired from the military. That is where they were
19 living.

20 Q. In Philadelphia?

21 A. Uh-huh.

22 Q. How long were you in Philadelphia during that
23 period?

24 A. About three months. I was waiting to join my
25 husband overseas.

1 Q. Did you visit the family periodically?

2 A. Usually on the weekends.

3 Q. What was the name of your aunt they lived with?

4 A. Elaine Williams.

5 Q. Did Jimmy have any problems that you are aware of
6 during those three months?

7 A. None that I was aware of.

8 Q. What do you attribute that to?

9 A. He was at Aunt Elaine's house. You don't get in
10 trouble at Aunt Elaine's house.

11 Q. How physically do the three children compare,
12 Sylvia, Mark and James?

13 Are they similar?

14 A. They all look alike.

15 Q. Were you struck by how similar they all were?

16 A. Very much so.

17 Q. How about their mannerism and body movement?

18 A. Exactly the same. They spoke with their body.
19 They didn't do a lot of talking verbally. They spoke
20 with their eyes and body movement.

21 Q. You knew James, Senior?

22 A. Yes.

23 Q. What was his ethnic or racial background?

24 A. He was black. He seemed to have had a problem
25 with it.

1 Q. How black? Was he a dark skinned man?

2 A. Very dark.

3 Q. What do you mean by that, when you say he had
4 seemed to have a problem?

5 A. I never saw him that he didn't mention the fact he
6 was black and we weren't. That is how he put it to us.
7 That is how he put it.

8 Q. Could you know what the ethnic or racial
9 background of Jessie's first husband was, your father
10 was?

11 A. My father was Cherokee.

12 Q. Is there an understanding in the family about the
13 reasons why Jessie married James, Senior?

14 A. My mother married James, Senior because she was
15 being rebellious. She knew the family did not want her
16 with a dark skinned man. She did it for spite.

17 Q. I want to talk now about Jessie, your mother.

18 Could you explain to the court what kind
19 of maternal bonds your mother has formed with her
20 children?

21 A. I have never seen my mother form any kind of bond
22 with the children. I never seen her touch them or hug
23 them or anything like that.

24 Q. Do you know when it was that you learned that
25 James, Jimmy, had left home?

1 A. I was overseas and when I would talk to the
2 family, you know, two or three times a month, I would ask
3 about him. And their reply would be, we don't know where
4 he is. He disappeared.

5 This went on for many years. I had no
6 idea what happened to him.

7 Q. Do you know if he had been imprisoned?

8 A. No.

9 Q. Did you ever ask about him or his whereabouts?

10 A. Yes. I always asked about him.

11 Q. You always got the same answer?

12 A. Always got the same answer, they had no idea.

13 Q. Is it fair to say that the family disowned James
14 at a young age?

15 A. Oh, yes.

16 Q. Tell the court what kind of individual Jessie is,
17 the mother?

18 A. My mother is quite strange. She is very paranoid.
19 She uses a lot of foul language. She socializes but yet
20 a loner. She doesn't allow herself to form
21 relationships. She doesn't want any family members to
22 form relationships.

23 She lived with me for a period, and I have
24 very active children. She was very upset with me because
25 my children were allowed to go out and have friends and

1 spend the night and friends spend a night. She always
2 said it would cause trouble, that people could tell
3 lies. She thinks everybody lies.

4 Q. Does she think children lie?

5 A. Yes.

6 Q. Does she trust children?

7 A. No. She trusts nobody.

8 Q. Is that the reason why she wouldn't want the
9 children to go out and play?

10 A. Yes. She always said that the children would
11 claim that there was sexual harassment of some sort.

12 They would say my husband did something to
13 them if I allowed the children in to my home.

14 Q. You mentioned I think one time she was overly
15 protective of children?

16 A. Very much so.

17 Q. What do you mean by that? That she was protective
18 of their welfare or what?

19 A. Pretty much protective of their welfare.

20 Q. The way she was overly protective, did that have
21 any relationship to her trust or lack of trust?

22 A. Her lack of trust.

23 Q. Explain that to the court.

24 A. She has no trust in humans. This is how she'll
25 tell you. She doesn't trust anybody. She tells you,

1 don't trust anybody.

2 She is just paranoid.

3 Q. Now, does she ever talk about Sylvia, for
4 example?

5 A. No.

6 Q. And she never talked about James --

7 A. No.

8 Q. -- how she was able to abandon you and your two
9 brothers?

10 A. Yes.

11 Q. She was able to forget about her other children,
12 too?

13 A. Yes.

14 Q. Does she believe in having close friends?

15 A. No, she does not.

16 Q. Is she a forgiving person?

17 A. No. She is a very non-forgiving person and the
18 family walks on eggshells around her because they don't
19 want to upset her.

20 Q. What is her relationship to your brothers?

21 A. My oldest brother is now deceased. He died after
22 a massive heart attack in '88. She had no communication
23 with him whatsoever. She didn't attend his funeral.

24 My next brother Charlie Perry, she
25 communicates with him from time to time. But he never

1 met him until I convinced him to meet her. I convinced
2 him to meet his mother.

3 Q. Did Jessie attend her own mother's funeral?

4 A. No, she did not.

5 Q. You mentioned before that James, Senior died, I
6 believe in 1992?

7 A. November, 1992.

8 Q. Did Jessie attend his funeral?

9 A. Yes, she did.

10 Q. Did she show any grief at his funeral?

11 A. No, she did not.

12 Q. Describe to the court what you described to me
13 about the funeral of James, Senior.

14 A. It was strange. She was busy entertaining her
15 guests, so to speak. It is if there was a large dinner
16 party gathering and she served them sodas or water or
17 whatever it was they wanted and she made sure she sat
18 down and conversated with each and every one and laughing
19 and joking and making the same vulgar jokes as always
20 during the entire time.

21 Q. What are her smoking and drinking habits?

22 A. She is a heavy drinker and heavy smoker.

23 Q. What is her attitude toward her personal
24 appearance?

25 A. She is very vain.

1 Q. Is she a feeling person?

2 A. No.

3 Q. Have you ever seen her show any attention toward
4 anyone?

5 A. My youngest daughter. That is the only person.

6 Q. No one else?

7 A. No one else.

8 Q. When did that begin to develop, if you remember?

9 A. When I established a relationship with her in
10 1990. My youngest daughter is the only person she'll
11 call on the telephone and converse with.

12 Q. Now, you mentioned foul language. Can you
13 please describe to the court how Jessie will use foul
14 language?

15 A. Well, she uses foul language for all body parts.
16 She uses the F word for everything. She can't say good
17 morning without saying the word. She will use M F all
18 the time.

19 And she will calm down if I say, mother,
20 please, I can't handle this today. She will say, okay,
21 I forgot you are high and mighty, you can't cuss. I say
22 no, that is not why. I just don't appreciate it.

23 Q. Does she have any qualms about using this language
24 in front of children?

25 A. No. Children, men, old people, young people. She

1 doesn't care.

2 Q. How does that make your husband feel?

3 A. Very embarrassed. He told her that.

4 Q. She continues to do it?

5 A. Yes.

6 Q. Is sex a topic every conversation?

7 A. Yes, constant, constant, constant. Everything
8 revolves around that subject for her.

9 Q. We will talk more about Sylvia later. I wanted to
10 ask questions about Jessie's relationship with Sylvia
11 now.

12 Sylvia lived with you on two different
13 occasions?

14 A. Yes. When she was -- we were living in Texas.
15 She was a teenager. And they were having some problems
16 with her in Philadelphia. They sent her to spend the
17 summer with me thinking that would keep her out of
18 trouble.

19 During that period, she tried to commit
20 suicide several times. She would slash her wrist and my
21 husband would take her to the hospital and they would
22 stitch it up and she would come back and slash it in the
23 same spot again. She did it four different times.

24 The fourth time the hospital said they
25 weren't going to give her sedation; they just sewed her

1 up. We put her in the hospital and left her there and
2 asked my parents to come get her.

3 My mother showed up to get her. When she
4 picked her up, she didn't treat her as if she was a young
5 child with a problem. She started talking about soap
6 operas with her. She addressed her as if she was an
7 older person.

8 Q. Did she show any signs of affection toward
9 Sylvia?

10 A. No. Her exact words was, girl, get in the car. I
11 have got to tell you what happened on the stories. I
12 about fell out of my chair.

13 Q. She never asked why she was in the hospital?

14 A. No.

15 Q. How was she feeling?

16 A. No. The next time she lived with me was in
17 Missouri.

18 Q. We will get to that later.

19 Tell the court about the incident
20 involving Sylvia's accident in Germany.

21 A. She had an accident on the autobahn in Germany and
22 it scared her face up pretty bad. She was incapacitated
23 for months.

24 She called my mother to come help her. At
25 that time she had two small children with her. My mother

1 didn't go.

2 Q. Did your mother ever talk about it?

3 A. No.

4 Q. Mark, James full brother, your half brother. Tell
5 the court about what occurred with his daughter Valorie
6 shortly after his wife died?

7 A. Actually it was Violet not Valorie.

8 My brother sent Violet to live with my
9 mother after his wife died. You have to understand he
10 had 10 children to contend with. I took one and he was
11 asking my mother to take one.

12 My mother took the child in her home and a
13 month after she took the child in her home she called me
14 to ask me to tell my brother that she had a package
15 coming for him and to meet it at the airport. That is
16 how she said it, meet it at the airport. When we went to
17 the airport it was Violet.

18 Q. She didn't tell you she was sending Violent
19 back?

20 A. No. She said it was a package.

21 Q. She didn't talk to Mark about it?

22 A. No. She didn't want to argue with him about it.

23 Q. Now, you have seen Jessie and Mark together. Mark
24 is now dead. But you have seen them together?

25 A. Yes.

1 Q. When they were together, what was the nature of
2 the relationship?

3 A. They argued the whole time. I mean, they would
4 argue about anything. They would go back and dig up --
5 Mark was kind of bitter, I guess you would say. He was
6 always digging up things of what happened in their
7 childhood that he didn't appreciate and asking her
8 questions why didn't she let them know that she had other
9 siblings. What was the problem with it. They argued
10 constantly about that.

11 Q. Did you ever see any signs of affection between
12 Jessie and her son Mark?

13 A. No.

14 Q. Did you see any interest that Jessie displayed in
15 Mark's life or his problems or anything of that sort?

16 A. No.

17 Q. Jessie, when she -- James, Senior was in the
18 military, correct?

19 A. Yes.

20 Q. They lived on military bases up until he retired
21 and then they moved to Philadelphia?

22 A. Right.

23 Q. Now, based upon the family knowledge when they
24 lived on the Army base, what did Jessie do?

25 A. The only work she ever did, she worked in the

1 clubs. She worked as a waitress in the clubs on the
2 base.

3 Q. Did she have a reputation in the family of having
4 been sexually promiscuous?

5 A. Yes.

6 Q. Explain that to the court.

7 A. They would say how she ran around a lot with
8 different men or she would leave home and not come home
9 when she was supposed to come home. I guess even before
10 her husband got home.

11 Q. Did she have a name for herself?

12 A. The hostess with the mostest.

13 Q. Did she ever tell you that was her name?

14 A. She sent me a picture and that was on the
15 picture.

16 Q. Tell the court about what Jessie is like sometimes
17 in conversations?

18 A. She wonders. She has a tendency to stare off
19 in space. She can sit for hours in the dark and drink
20 and smoke. This can go on for three or four hours at a
21 time.

22 Q. During the course of a conversation --

23 A. She will change the subject if she doesn't like
24 what you are talking about. The way she does it, she
25 will turn to another person and say, well, anyway, and

1 say what she wants to say.

2 Q. In the middle of -- In the middle of conversation
3 she drifts off?

4 A. Yes.

5 Q. She is no longer there?

6 A. She just detaches herself.

7 Q. What happens to her emotions? How do her emotions
8 change, if at all?

9 Does she turn on and off her emotions?

10 A. She doesn't really show a lot of emotion. She
11 tries to stay in control of her emotions.

12 Q. How is she about keeping the house?

13 A. Fanatical.

14 Q. What do you mean by that?

15 A. Everything has to be in its place at all times.
16 Nothing can be out of place, nothing can be dirty. She
17 washes everything. I don't care what it is. She is just
18 fanatical about cleanliness.

19 Q. Now, what do all three of her second set of
20 children say about her? What have they told you about
21 her, her being there or not being there?

22 A. They all told me she was never there when they
23 needed her. They all told me that she never spoke up for
24 them like a mother would stand up for her children. All
25 three told me that.

1 Q. Let's talk about James, Senior, Jimmy's father.

2 Did you know James, Senior very well?

3 A. No, I didn't.

4 Q. You said he died in 1992?

5 A. Yes.

6 Q. What kind of reputation in the family did he have
7 regarding his treatment of Jessie?

8 A. They said he was abusive. They said there were
9 times when he would come from wherever -- I don't know
10 where it was -- but he would come home and beat
11 everything in the house, beat all the children and her
12 and they also said that a lot of the beatings that he
13 gave her was because she was promiscuous.

14 Q. Did people talk about him carry a gun on him?

15 A. Yes. He bragged on that.

16 Q. Tell the court.

17 A. He said he always had to carry a gun on her.

18 Q. He carried a gun on your mother?

19 A. Yes.

20 Q. What was his reputation in the family for
21 drinking?

22 A. A heavy drinker at one time.

23 Q. Now, when you were in Philadelphia, what did you
24 observe when James, Senior, the father, would walk into
25 the room?

1 A. All three of his kids just about stood at
2 attention. I mean, they sat erect. If they were
3 sitting, they sat erect when he came in the room.

4 This baffled me. I didn't understand
5 why.

6 Q. Later in life when James, Senior was in the
7 hospital, did anybody come visit him?

8 A. Just me.

9 Q. Jessie never came?

10 A. Well, my mother, she was there, yes.

11 Q. But the other children?

12 A. Sylvia, nobody.

13 Q. Later on in his life, did you and James, Senior
14 have a talk one time about the family?

15 A. It was after his open heart surgery, he wanted
16 to go to the zoo. My family and I, we accompanied them
17 to the zoo. We were walking. He couldn't walk very
18 fast.

19 He tapped me on the shoulder and asked me
20 to sit on the bench with him. I did. He went and
21 apologized and said he wished he had been a better
22 father.

23 Q. Now, after your experience in Philadelphia when
24 you had a family, did you occasionally visit James,
25 Senior and Jessie at their home?

1 A. Excuse me. Where was this?

2 Q. After Philadelphia when you were there for
3 three months and went overseas, after that point in
4 time would you go and visit James, Senior and Jessie
5 at their home?

6 A. Not until we all moved to Georgia.

7 Q. What year was that about?

8 A. 1989.

9 Q. And then when you would go visit them at that
10 point in time, what was he like?

11 A. During that time he had calmed down and he was
12 quiet. Prior to that in Philadelphia when I was there
13 before going overseas, you could see there was a lot of
14 tension in the home.

15 When I would go over there even my
16 mother's actions and the children, they would barely move
17 around. At dinner time they all eat with their heads
18 hung down. They didn't lift their heads until they were
19 finished eating. They had to eat every morsel on the
20 plate or they would be in trouble.

21 You could feel the tension, you could cut
22 it with a knife.

23 Q. Let's talk about Sylvia. Now, you mentioned
24 that Sylvia lived with you on two different occasions,
25 right?

1 A. Yes.

2 Q. Talk about the first occasion. When was that?

3 A. It was 1968 when we were living in Texas. I had
4 given birth to my second daughter, is when my mother
5 decided to send her to me to keep her out of trouble in
6 Philadelphia. I didn't know what she was doing. I had
7 no idea what she was trying to get her away from.

8 But she was absolutely a terror from the
9 day she came into our home. She was very much
10 overweight. She weighed about 390 pounds at that time.
11 We were supposed to help her lose weight.

12 She would get up in the middle of the
13 night and cook steaks and we would catch her. She would
14 run outside the house and just reek havoc on the
15 neighborhood yelling and screaming. This went on for
16 weeks until she decided to start cutting herself.

17 Q. Did she suffer from any kind of emotional
18 disorder?

19 Did she get prescriptions?

20 A. At that time she wasn't on any medication.

21 Q. This was later?

22 A. This was later.

23 Q. Tell us how that played out during that first
24 time?

25 A. The first time is when my mother got her and

1 treated as if she was an adult and didn't ask questions
2 about what happened to her or why. She didn't ask us any
3 questions or her, any questions.

4 Q. How long had she been with you, Sylvia?

5 A. She had been with me almost three months. And in
6 the beginning we tried to send her back, telling my
7 mother we couldn't handle her. She said, don't send her
8 back.

9 Q. Did your mother communicate with her during that
10 period of time by telephone or letter?

11 A. No.

12 Q. How old was she then?

13 A. She was a teenager. I am not exactly sure how
14 old.

15 Q. Had she had Helen by then?

16 A. No.

17 Q. Was it the expectation when she moved to live with
18 you it was a permanent move?

19 A. I was dumb to the fact in the beginning but as
20 time went on that is what I figured out, she had been
21 sent to me to live permanently. But it didn't work.

22 Q. Jessie never talked about it, she just sent her to
23 you?

24 A. Yes.

25 Q. Tell us about the second time that Sylvia lived

1 with you.

2 A. The second time is when we were stationed in
3 Missouri and she just showed up at my doorstep. She said
4 I came to visit you for a couple weeks. I said, oh,
5 well, fine.

6 A couple weeks turned into a month and it
7 continued on. In the meantime --

8 Q. When was this? What year was this?

9 A. This was in 1987.

10 Q. How old would Sylvia have been then?

11 A. If she is 45 now she had to be in her mid 30s.
12 She started drinking right away. She would drink beer
13 and tequila at the same time.

14 My husband tried to get her to stop doing
15 that. She would sneak out of the house at night. We
16 didn't know where she was going. She was stealing things
17 on the base.

18 Q. What happened to her children by this point in
19 time?

20 A. Her husband's parents got her children.

21 Q. You are talking about the subsequent children, not
22 the first child?

23 A. Not the first child. She got married and had two
24 children. The husband's parents got the children because
25 they were neglected.

1 She left them alone for weeks at a time.
2 She would leave the two children alone. So, she didn't
3 raise them.

4 Q. She didn't form the maternal bond with her
5 children either?

6 A. No. So she would meet guys and she wouldn't bring
7 them to our home. She knew that wasn't allowed. She
8 would stay out all night with them and the next thing you
9 knew she would say these people were in love with her.
10 Next thing you would know she was saying they would give
11 her money and the next thing they were going to marry
12 her.

13 There was no truth in it. So the male,
14 whomever she was with told her she misinterpreted things.
15 This is when she would go off on suicide binges. She was
16 going to kill herself.

17 And this went on for months and months and
18 months.

19 And finally the police brought her home
20 one night. They found her walking in the lake, and it
21 was a winter morning, if you know what Missouri is like.
22 That is when we had her committed to the hospital.

23 Q. Into a mental hospital?

24 A. Yes.

25 Q. In Kansas City?

1 A. Yes.

2 Q. Before she was committed to the mental hospital in
3 Kansas City, was she taking any medication?

4 A. Yes, she was. She was on that Prozac and some
5 other medication. But if she took the medicine she was
6 okay. The problem was, she didn't take the medicine.
7 She would throw it away.

8 Q. I think you mentioned Lithium?

9 A. Yes, Prozac and Lithium. If she took it she was
10 okay.

11 Q. She would put it in flower pots?

12 A. Flower pots or anywhere. She wouldn't take it.

13 Q. How would you compare Sylvia with the mother?

14 A. They are a lot a like.

15 Q. What ways?

16 A. They are. Their outlook on life.

17 Q. What do you mean by that?

18 A. They have no regard for anything. They don't care
19 about anything. I don't even think they care about
20 themselves.

21 They both abandoned their children, never
22 even mention their names. They don't know if their own
23 children are living or dead.

24 Q. Did Sylvia ever drift off?

25 A. Yes. It was very hard to hold a conversation with

1 her. You are talking to her and she starts staring off
2 into space.

3 Q. Show the court what that was like. Demonstrate.

4 A. Well, you are talking to her and she would just
5 start.

6 My husband really got frustrated with her.
7 He would say, Sylvia, earth to Sylvia, please come back
8 to earth. He thought she would laugh, to get her back.
9 She would just keep doing it and turned around and around
10 and around and stared out in space.

11 She could also sit in the dark.

12 Q. What do you mean by that, sit in the dark?

13 A. In her room with no lights, just sit there with a
14 bottle of beer and cigarettes.

15 Q. And just stare?

16 A. And just stare, not say a word.

17 Q. Did Sylvia say anything to you about her sexual
18 tendencies?

19 A. Yes.

20 Q. What did she say?

21 A. She told me she was bisexual.

22 Q. Did Sylvia ever tell you about an incident when
23 she was a child involving her and Jimmy?

24 A. Yes.

25 Q. What did she tell you?

1 A. Well, the way she put it was that they played with
2 each other. I don't know what it meant. I didn't ask
3 her to be specific. But she said that they played with
4 each other.

5 Q. Did she tell you that she told on Jimmy?

6 A. Yes.

7 Q. And who did she tell?

8 A. She told my mother and my mother told my father
9 and that is when my father tied his penis up.

10 Q. Did she tell the truth on Jessie when she told the
11 story?

12 Did she tell you what she told on Jessie
13 was not entirely truthful?

14 A. Yes. She said it was her idea.

15 Q. To get Jimmy in trouble?

16 That is what resulted in the penis tying
17 incident?

18 A. In the closet, putting him in the closet. That is
19 what she told me.

20 Q. Let's talk about Mark. Mark was in the military?

21 A. Yes.

22 Q. You said he had 10 children?

23 A. Yes.

24 Q. And you made a comment to me about his having 10
25 children.

1 What was behind that, do you remember?

2 A. Mark, he was a control freak as well.

3 Q. Like his mother?

4 A. Yes. He treated those children as if they were
5 his Army. And they didn't only come to attention when
6 he came in the room, he demanded they come to attention
7 when he came in the room. They had to address him as
8 sir.

9 He made them do -- I don't remember the
10 proper name for it -- the Army training, the running and
11 pushups and jumping jacks. He made them do that. He get
12 them up out of bed two or three o'clock in the morning
13 and would make these little young children do this Army
14 training. And if any of them, whichever one fell down,
15 he would beat it, literally beat it.

16 They were only allowed to speak if they
17 were spoken to by him.

18 Q. Did you ever compare that situation to what it was
19 like when he grew up?

20 A. Yes. Because when he was doing this, he was
21 pretty wasted on his booze himself.

22 When he was sober he would say things --
23 like I would mention it to him, you can't treat the
24 children like that. He would say, well, that is what my
25 old man did. He said that is all I know.

1 Q. You visited his family in Hawaii, didn't you?

2 A. Yes, I did.

3 Q. And you described to me the family as being
4 extremely dysfunctional?

5 A. Extremely dysfunctional.

6 Q. Explain to the court why you said that?

7 A. It was dysfunctional to the point that even though
8 he was controlling the way he was the children was not
9 disciplined at all, at all. They screamed. The minute
10 he left the house, they started yelling and screaming at
11 the mother. They would be yelling and screaming and
12 cursing at the mother and the mother is yelling and
13 screaming at the children. This was from the biggest
14 down to the youngest.

15 There was a four year old that cursed. I
16 never heard a four year old curse in my life. This
17 little girl could curse her mother.

18 She would say, don't go outside. She
19 would say if you and go outside -- I never saw anything
20 like it in my life.

21 Q. Did you ever notice any of the children banging
22 their head against the wall?

23 A. Oh, my God, yes.

24 Q. Describe that to the court.

25 A. If they got upset and things didn't go the way

1 they wanted, they would sit there and scream and bang
2 their head and scream.

3 A couple of them still do it.

4 Q. Now, Mark lived with you for a period of time?

5 A. Yes, he did.

6 Q. This was down in the Atlanta area?

7 A. Yes.

8 Q. Tell the court --

9 A. That is after his wife died.

10 Q. When was that?

11 A. His wife died January, 1995. She died of a
12 massive heart attack.

13 The day she died, he had made her wash and
14 wax his car.

15 Q. Did he beat up on his wife?

16 A. Oh, yes. He knew she only had a year to live. He
17 would beat her and beat her and beat her.

18 Q. When he moved in with your family, tell us what it
19 was like.

20 A. It was a nightmare.

21 Q. How come?

22 A. He lost his temper a lot. He would drink the beer
23 and sit in the sun room. I have a sun room. He would
24 sit in there and drink beer and smoke and wanted to pick
25 fights with you. He didn't like this or that. I was

1 having too much influence on his children. He didn't
2 like my attitude. I was miss rich girl, and he would go
3 on and on.

4 Q. Was he on speaking terms before he moved in with
5 you? Before James, Senior was -- was he on speaking
6 terms with his father?

7 A. No.

8 Q. Do you know why?

9 A. I don't know. They had a falling out.

10 Q. Now, tell the court, you mentioned before the
11 incident when Violet was sent to Jessie because the
12 mother had just died, Mark's wife just died and he needed
13 help raising the kids, correct. And then she sent Violet
14 back as a package and you picked her up at the airport
15 not knowing what would happen?

16 A. Right.

17 Q. How did Mark react to that?

18 A. He became very violent. My husband had to almost
19 sit on him to keep him from hitting me. He was coming
20 after me.

21 Q. What did he tell you during that period?

22 A. He said it is just like my mother. Whenever you
23 need her, she is not there.

24 Q. Did he ever talk to you about the beatings he,
25 James and Sylvia would receive as children?

1 A. That night in particular.

2 Q. Tell the court about that.

3 A. He just started -- actually started crying and
4 screaming and yelling how he had such a terrible
5 childhood, this is why he can't function, this is why he
6 has a brother on death row, because all these people did
7 was beat them to death.

8 He said they believed in tying up your
9 penis and beating you.

10 Q. Did he ever say anything like you don't know --

11 A. He said I was the lucky one. He said you have
12 been sad all your life because you didn't have your
13 parents.

14 He said you don't know, you are lucky
15 because --

16 Q. Did he say you don't know the kind of hell we
17 lived in?

18 A. Yes.

19 Q. Did he tell you they just felt they couldn't do
20 anything to suit their parents?

21 A. Yes. Absolutely nothing they did satisfied
22 them.

23 MR. BAKER: It seems this conversation
24 occurred in 1992. I know since yesterday the Tennessee
25 Rules are not necessarily applicable at a sentencing

1 hearing but we are talking -- she is talking about
2 hearsay things in 1992. I think we are getting a little
3 far afield.

4 THE COURT: Well, Tennessee Rules of
5 Evidence don't apply here.

6 Let's talk about the Federal Rules of
7 Evidence. Mark Jones is deceased.

8 MR. MACLEAN: Yes.

9 THE COURT: That I think pretty clearly
10 makes him unavailable.

11 MR. BAKER: We agree with that.

12 THE COURT: That takes us into Rule 801.

13 Anybody have a comment on that?

14 MR. MACLEAN: Well, we have a number of
15 comments, Your Honor.

16 THE COURT: The 800 series is what I meant
17 to say. That takes us in to rule 804 particularly.

18 MR. REDICK: Statement of the personal
19 family history.

20 THE COURT: Statement concerning
21 declarant's own family history, birth, adoption,
22 marriage, relatives, ancestry or other similar facts of
23 personal family history even though declarant had no
24 means of obtaining personal knowledge as stated.

25 MR. MACLEAN: Your Honor, here is the

1 point. The purpose of this testimony is to demonstrate
2 the type of mitigation that should have been put on. Of
3 course, back at the time of the trial there was no effort
4 to find any of the family members. You know, there has
5 been some hearsay testimony by Lionel Barrett that
6 someone in their office tried to contact Mark Jones but
7 there has been no verification of that.

8 Obviously if Mark Jones had been here he
9 could testify to what happened. So, the first round is
10 that we have got to get to the bottom of what could have
11 been presented at the mitigation case, at the sentencing
12 hearing in James Jones' case.

13 Secondly, Your Honor, I think it is
14 appropriate to apply the rules of evidence that would
15 have applied in the sentencing hearing to demonstrate to
16 Your Honor, to this Court, what kind of proof could have
17 been presented so Your Honor can evaluate the prejudice
18 that would have occurred.

19 So, it is really proof of what the proof
20 would be.

21 THE COURT: Mr. Baker.

22 MR. BAKER: Your Honor, it is hearsay when
23 she says Mark told her.

24 Second of all, with regard to Tennessee
25 Rules, she could not have told the Tennessee courts

1 anything other than what she would have known in 1987.
2 She is talking about conversations in 1992.

3 MR. MACLEAN: Well, she is talking about
4 conversations in 1992 with a witness that would have been
5 available and possibly there were other witnesses that
6 would have been available in 1987. And she is talking
7 about information that was there available back in 1987
8 if trial counsel had done their job to investigate the
9 case.

10 MR. BAKER: What she says he would say is
11 hearsay. I don't see it falling into any exception.

12 THE COURT: Well, we will have to go
13 question by question, I guess.

14 MR. MACLEAN: We don't think the hearsay
15 rule applies in a sentencing hearing. I think the
16 statute is very clear on that.

17 THE COURT: I understand. But let's make
18 it really clear. I am applying the Federal Rules of
19 Evidence to what it is I am letting in this hearing, and
20 not the Tennessee Rules of Evidence. And if it falls
21 under the statement of the personal or family history
22 then I am going to let it in. If it doesn't, then you
23 can make your offer of proof.

24 MR. REDICK: Well, I think this concerns
25 family history.

1 MR. BAKER: This is going beyond family
2 history. This is addressed to family census, when were
3 you born; what date were you married and not substantive
4 statements but hearsay statements about family life.

5 THE COURT: I am going to let it in under
6 804 (5).

7 Q. I forget the question. Do you remember?

8 Mark was telling you on this occasion what
9 it was like when he was growing up.

10 Did he tell you that the father would whip
11 everything in sight?

12 A. Yes, it is. That was 1996 he said it.

13 MR. BAKER: A standing objection to these
14 hearsay statements. I realize you ruled.

15 THE COURT: Well, I am going to allow this
16 witness to testify. I am letting it in because the
17 declarant is unavailable. I think it is probative. I
18 also recognize that the declarant is not subject to
19 cross-examine. Therefore, I am taking it with a grain of
20 salt.

21 Unless there is other information that
22 tends to corroborate it, I will tend not to believe it.
23 If there is other corroborating information, I will tend
24 to believe it. But until I hear it, I don't know what I
25 can do. It goes to the weight of it rather than whether

1 it could have happened at all.

2 I think the other exceptions provision is
3 necessary to be applied in this case. I understand what
4 the parties are saying. You are trying to put on
5 evidence about what the evidence may have been. I have
6 to apply the Federal Rules of Evidence, but if evidence
7 of what the evidence might have been determines what is
8 relevant, it certainly is relevant.

9 But in terms of testing the voracity of
10 testimony the Federal Rules of Evidence apply. But the
11 reason there is a catch-all exception is because you
12 can't currently anticipate everything, and under 804(5)
13 the statement offered as evidence of a material fact that
14 I just said, it is material because it relates to what
15 evidence could have have been introduced at the trial, at
16 sentencing, the statements are more probative on the
17 point which it is offered than other evidence. The
18 reason it is more probative is the declarant is dead.

19 The general purpose of the rules and
20 interest of justice will be served by admission of the
21 statement.

22 However, statements may not be admitted
23 under this exception unless you make it known to the
24 adverse party sufficiently in advance of trial or hearing
25 to provide the adverse party a fair opportunity to meet

1 it. Proponents have to give the name and address of the
2 declarant. That may or may not have been satisfied.

3 But the point is that so proponent may
4 contact the declarant and try to rebut it. In this case
5 you can't contact the deceased.

6 So, I am going to let it in. I am also
7 going to acknowledge that the rules of evidence are there
8 because they are historical examples of what is credible
9 and what is not.

10 To the extent that something doesn't fit
11 well within an exception it has, in my mind, limited
12 credibility unless there is other indicia of reliability.
13 How I am going to determine whether there is other
14 indicia of reliability is look at the entire record.

15 Frankly, at this point what I have heard
16 is certainly pretty clear Mr. Jones' mother and father
17 were not model parents. I don't think that is really
18 being disputed. The question is to what degree.

19 For our purposes there has been no
20 testimony at the trial regarding those individuals and
21 the issue appears to be whether these are matters that
22 the jury should have known or needed to know or if they
23 weren't given that opportunity whether it would have made
24 any difference.

25 That is my thinking on the process. The

1 record is clear how I am approaching it. If on further
2 reflection after the conclusion of the trial I think I
3 made an error in that regard, I will correct it and deem
4 something inadmissible.

5 But based upon 804(5) at this point I
6 think I need to hear it. This is not a jury trial. I
7 know the difference between what is unreliable and what
8 is not. I take into account that part of this family
9 history is hearsay on hearsay on hearsay and I am
10 weighing it accordingly.

11 But I will note that this witness'
12 demeanor and deportment for now, in any event, is someone
13 who has the appearance of making every effort of telling
14 the truth.

15 I will also note that it is not uncommon
16 that family members will certainly believe things that
17 are flat out lies. They may believe them but they may
18 not be true. Families are complicated things.

19 So, for the benefit of the reviewing
20 courts, those are my views and from time to time I am
21 wrong. That is how I will approach it.

22 Go ahead.

23 Q. Did Mark ever tell you anything to the effect that
24 you wonder why I am like I am?

25 A. Yes, he did.

1 Q. Tell me about that.

2 A. I would always try to talk to him and try to calm
3 him down because he had such a temper and he was such a
4 controlling individual. He would reply by saying, I
5 can't help it. I am this way because that is all I know.
6 That is the way my daddy was. But he wasn't voluntarily
7 telling me the information. It is because I was trying
8 to correct him.

9 Q. Did Mark sit in the dark the way Jessie and Sylvia
10 would sit in the dark?

11 A. Yes, he did.

12 Q. Describe that to the Court.

13 A. He could sit -- as a matter of fact, he did it
14 every evening after work. He would get himself a 12 pack
15 of beer and go to the sun room and just sit there with no
16 lights on, no radio, no nothing. Just sit there in the
17 dark and drink the beer until it was all gone and smoke
18 cigarettes.

19 Q. Did Mark compare the treatment that he received
20 from the father when he was young to the treatment that
21 James or Jimmy received?

22 A. Yes, he did. The way he told me about that was
23 that he said he had to -- they picked up with him where
24 they left off with Jimmy.

25 Q. They would start with --

1 A. Beating.

2 Q. -- with Jimmy?

3 A. No. Once Jimmy was gone the beatings started with
4 him.

5 Q. When Jimmy was living with them, did that mean
6 Jimmy would get the beatings and not him?

7 A. Yes.

8 Q. Did anybody contact you before Jimmy's murder
9 trial in 1987?

10 A. I didn't know anything about a murder or trial or
11 anything.

12 Q. If somebody had contacted you, would you have been
13 willing to testify?

14 A. Yes, I would have.

15 Q. Would you have been willing to help in the
16 defense?

17 A. Yes, I would have.

18 Q. Did Mark ever tell you anything about whether or
19 not he had been contacted?

20 A. Yes. He said if he had been contacted he would
21 have come forth and testified and let people know exactly
22 what kind of background he had.

23 Q. Was Mark interested in Jimmy and interested in
24 helping him?

25 A. Yes.

1 MR. MACLEAN: One moment.

2 THE COURT: While you are gathering your
3 thoughts, let me correct a citation. I forgot, just
4 instantly recalled, that 804(5) under recently enacted
5 legislation has been moved. It is now 807. Same thing,
6 different number.

7 So, I wanted to make that clear.

8 MR. MACLEAN: That is all, Your Honor.

9 THE COURT: Mr. Baker.

10 MR. BAKER: Yes, Your Honor.

11 THE COURT: Your turn.

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EXAMINATION OF NANCY LANCASTER

BY MR. BAKER:

Q. Ms. Lancaster, you stated I believe that you had met James Jones twice prior to today?

A. Yes. Three times prior to today.

Q. One of those times was in Philadelphia?

A. Yes. Actually I shouldn't say three times. I did see him on occasion when I was in Philadelphia for the three months. You know, for an hour here or Sunday dinner.

Q. So, the first time was in Philadelphia?

A. Yes.

Q. And he was about 13 or 14?

A. Yes.

Q. And do you know about how old you were?

A. I was in my 20s.

Q. You are a little older than he is?

A. Yes.

Q. And were you both staying at the same house at that time?

A. No, we were not.

Q. Was he with his parents?

A. Yes. With his parents in my Aunt Elaine's house.

Q. Where were you?

A. I was staying with my in-laws. I was married. I

1 was staying with my in-laws waiting to go overseas to
2 join my husband.

3 Q. During that time how much contact had you had?

4 A. On weekend visits.

5 Q. You would see him on weekends?

6 A. Yes. I would go to be with my family for a
7 dinner.

8 Q. It wasn't day-to-day?

9 A. No.

10 Q. The second time, correct me if I am wrong, was
11 Hawaii?

12 A. No, I didn't see Jimmy there.

13 Q. Second time was when James was 16?

14 A. Another time I had gone back home to visit.

15 Q. In Philadelphia?

16 A. In Philadelphia. They had moved away from my Aunt
17 Elaine's house and they lived on a street called Addison
18 Street.

19 Q. Second time Jimmy was still a teenager?

20 A. Yes.

21 Q. And that was in Philadelphia?

22 A. Yes.

23 Q. Those are your contacts with James at that time?

24 A. Yes.

25 Q. You also talked about Mark, Sylvia?

1 A. I had more contact with Sylvia than I did with the
2 boys.

3 Q. But was it at these two time frames, the several
4 months initially in Philadelphia and the second time?

5 Was your contact with him at the same time
6 you had contact with James?

7 A. Yes.

8 Q. Were there visits outside of these time frames you
9 also had with Sylvia?

10 A. I had more visits with Sylvia because Sylvia came
11 to live with me in Texas.

12 Q. At a later time?

13 A. Yes.

14 Q. When was the next time after Philadelphia that you
15 had contact with James?

16 A. When I came to visit him in Tennessee.

17 Q. When was that?

18 A. Last April.

19 Q. 1997?

20 A. Yes.

21 Q. In 1987, had you had any contact with James Jones
22 at all?

23 A. No, I hadn't.

24 Q. Had you had any contact with him prior to when he
25 was a teenager in Philadelphia?

1 A. Had I had any contacts with him --

2 Q. Between the time he was a teenager in Philadelphia
3 and 1987?

4 A. No, I hadn't.

5 Q. And during that time you did not know his
6 whereabouts?

7 A. No, I didn't.

8 Q. Do you have any knowledge he knew where you were
9 at?

10 A. No.

11 Q. Now, you talked about your mother who is also
12 James Jones' mother.

13 You said, I believe, that you first met
14 her when you were about 12?

15 A. My first meeting I know I was 12 that I can
16 remember.

17 Q. Where was that at?

18 A. In North Carolina at my grandmother's house.

19 Q. How much contact did you have with your mother
20 after that?

21 A. Very little until they retired in the military.

22 Q. When was that?

23 A. In 1965.

24 Q. And after 1965, how much contact did you have with
25 her?

1 A. Not that much until she moved -- she and I moved
2 to Georgia pretty close to the same time.

3 Q. When would that have been?

4 A. 1989.

5 Q. And from 1989 forward, how much contact have you
6 had with her?

7 A. It's quite a bit. On a weekly basis.

8 Q. You are both in the same town?

9 A. No. She is back in North Carolina now. But we
10 speak on the phone quite frequently.

11 Q. You all have contact now?

12 A. Uh-huh.

13 Q. Has it been since 1989 you talked to her a lot
14 about the family?

15 A. Yes, uh-huh.

16 Q. Has it been since 1989 that you gained most of
17 your information about the family?

18 A. A lot of it I knew before from my Aunt Elaine and
19 her husband.

20 Q. What have you heard from your Aunt Elaine and her
21 husband?

22 A. That is where I got my information about my
23 stepfather being so abusive and the treatment of the
24 children.

25 And I was also told by my uncle, Aunt

1 Elaine's husband, that he would put them in the car and
2 drive off to who knows where and beat them and bring them
3 back.

4 Q. You had that information in 1989 that you talk to
5 your mother about?

6 A. Yes. My mother wouldn't own up to that.

7 Q. Your mother denied that?

8 A. Yes.

9 Q. You talked about Mark as well?

10 A. Uh-huh.

11 Q. The petitioner's brother.

12 When did you first start having contact
13 with him?

14 A. Started having close contact with him in 1992 when
15 my step farther passed away.

16 Q. You talked earlier about conversations you had
17 with him about the family?

18 A. Yes. A lot of conversation about the family in
19 the years 1995 and 1996.

20 Q. And that is when you had the conversations with
21 him about what you previously told the court?

22 A. Yes.

23 Q. You have talked about your mother and James,
24 Senior and their relationship.

25 When James died, how did your mother take

1 that?

2 A. She wasn't a grievin' person. I only saw her
3 cry once. That is when the hearse pulled out in front
4 of us.

5 Q. Do you recall talking to Diane McCoy in the past
6 year or so?

7 A. Yes.

8 Q. Do you recall telling her that your mother will
9 not accept her husband's death, she won't go beyond
10 1992?

11 A. Yes.

12 Q. She comes to Atlanta on Memorial Day each year to
13 visit his grave?

14 A. Yes.

15 Q. She idolized him, she served him?

16 A. Uh-huh.

17 Q. When were you first approached by representatives
18 of James Jones about his case in Tennessee?

19 A. 1993. It wasn't explained to me. I was contacted
20 by a female that said I needed to sign an affidavit
21 saying that I was aware of the family background, family
22 history.

23 But they never asked me to appear or
24 anything like that. They just asked me to sign the
25 affidavit.

1 Q. That was 1993?

2 A. 1993. I remember I had to meet them at a
3 convenient store because my mother would not allow me
4 meet with them. She was living with me at the time.

5 Q. Was that in Atlanta?

6 A. Yes.

7 Q. They came to Atlanta?

8 A. They came to Atlanta. I don't know about they.
9 The woman met me at the convenient story.

10 Q. Since that time, when were you next contacted
11 about assisting Mr. Jones?

12 A. 1997.

13 Q. Who contacted you then?

14 A. Mr. Redick.

15 Q. I mentioned you had previously talked extensively
16 to Diane McCoy?

17 A. Yes.

18 Q. You talked to the petitioner in this case, Mr.
19 Jones?

20 A. Yes.

21 Q. And you talked to his attorneys?

22 A. Yes.

23 Q. Are you aware of his criminal past or background?

24 A. No.

25 Q. You don't have any --

1 A. Just what I read. That is all I know.

2 Q. Were you aware he was in federal prison?

3 A. Not until I read it.

4 Q. When did you read it?

5 A. Just last year.

6 Q. Are you aware he is currently serving for a murder
7 charge?

8 A. Well, yes.

9 Q. He had a prior second degree murder charge he was
10 serving in federal prison?

11 A. I read that.

12 Q. How would you describe your relationship with
13 James Jones today?

14 A. It's a good relationship. We talk quite
15 frequently.

16 Q. By telephone?

17 A. Yes.

18 Q. Would it be fair to say that you would not want to
19 see him serve his sentence to death?

20 A. It would be fair to say that.

21 MR. BAKER: I believe that is all, Your
22 Honor.

23 THE COURT: Any redirect?

24 MR. REDICK: No redirect.

25 THE COURT: Thank you. Is this witness

1 free to return to to Atlanta?

2 MR. MACLEAN: Yes. I believe her plane
3 leaves in an hour.

4 THE COURT: It is 15 minutes to the
5 airport. You have time.

6 All right. We have a lull in the
7 action.

8 Mr. Noles, I will put you on the spot for
9 a moment. We received that phone call from Mr. Dinkins.
10 Mr. Dinkins expressed discomfort of being here today due
11 to other commitments. I asked you to give him certain
12 directions also.

13 What was his response?

14 THE COURTROOM CLERK: He is supposed to be
15 here at 4:15 or call us back if there is a complication.

16 THE COURT: The current word is Mr.
17 Dinkins will be here at 4:15 or call back if there is a
18 complication. We have an expectation he will be here at
19 that time.

20 We need to take up the Gail Hughes Mann
21 matter. Mr. Noles handed me a note that apparently
22 Marshal Wehby is not in the building. But that another
23 representative of the Marshal's Service may be able to
24 assist us.

25 I think there maybe an individual out in

1 the hallway. Is there a Marshal in the hallway?

2 Welcome.

3 MARSHAL DIXON: Good afternoon. Do you
4 want me to take the stand?

5 THE COURT: No. Stand where everyone can
6 hear you.

7 I know you but others may not. Identify
8 yourself for the record.

9 MARSHAL DIXON: David Dixon, Deputy United
10 States Marshal.

11 THE COURT: Thank you. Let me sort of
12 give you the context and see if you can provide us some
13 guidance.

14 We have been attempting to get Ms. Gail
15 Hughes Mann to appear and have a discussion with us. My
16 memory is the Marshal's Service contacted her by
17 telephone to appear here for a deposition. She did not
18 appear.

19 As a result of that, I issued an order and
20 there was already an order issued for personal service.
21 I issued an order she be personally served and when I
22 last took this up, my memory is that she had not been
23 located, I guess is the polite way to put it.

24 It appears she may be making efforts not
25 to be located?

1 MARSHAL DIXON: Yes.

2 THE COURT: Anything you can do to inform
3 us as to what additional efforts the Court or Marshal's
4 Service may be able to take to locate her or any new
5 information you might have for us, Mr. Dixon?

6 Thank you for being here.

7 MARSHAL DIXON: Yes, sir. Since last
8 Thursday, I spent the whole day Thursday just watching
9 the house. No one came home. I talked to neighbors and
10 found out some things. Tried to fine out where she
11 worked. Apparently she is unemployed at this time.

12 She has been home about 30 minutes in the
13 last five days. The house is being watched.

14 Her husband, however, seems to be the
15 problem. Because Luke Wehby, the deputy, had given him
16 a copy of the subpoena and he was very belligerent to
17 Luke.

18 When Luke talked to the lady, she sort of
19 seemed intimidated and was talking in a very quiet voice
20 so as not to be overheard.

21 THE COURT: He had a personal face-to-face
22 discussion with her?

23 When was that?

24 MARSHAL DIXON: That is when he first
25 served the subpoena two weeks ago. He left a copy of the

1 subpoena with the husband.

2 THE COURT: I am sorry. I was under the
3 impression there had just been telephone service. He had
4 left a copy with the husband?

5 MARSHAL DIXON: He left a copy of the
6 subpoena and his card with the husband and asked him to
7 give it to his wife.

8 That night the wife called and told Luke
9 that she had not received this subpoena. Whether we can
10 belief that or not, I don't know.

11 But apparently Mr. Mann is the problem
12 here. He either doesn't want his wife to appear or
13 something. It could be here, too. I am not sure about
14 that.

15 However, I have located him and I know
16 where he works. I have tried to contact him. He will
17 not return my calls. He works for the State of
18 Tennessee.

19 I have not paid a visit because, really,
20 we returned the other subpoenas due last weekend to the
21 court.

22 It is my suggestion that Mr. Mann be
23 ordered before this court and let him tell you where his
24 wife is.

25 Because the Marshal's Service, although we

1 will do anything you ask us to do, we are spending a lot
2 of time, and just sitting on a house waiting is just not
3 very effective.

4 THE COURT: All right. So I guess in the
5 words of Lyndon Johnson, you think we ought to invite him
6 here and let us all reason together?

7 MARSHAL DIXON: Yes, sir.

8 THE COURT: Any views of the parties about
9 that?

10 MR. REDICK: Your Honor, I would like to
11 inquire of the Marshal if any more information was
12 gleaned from Mr. Mann about his reasons for resisting
13 service?

14 MARSHAL DIXON: No, sir, there was not.
15 He had a very bad attitude. He was not cooperative.

16 Either he didn't give the subpoena to his
17 wife or she -- he did and she is totally ignoring it.
18 I tend to have a feeling that he has an influence over
19 her.

20 THE COURT: What is his name?

21 MARSHAL DIXON: His name is Vincent Mann.

22 THE COURT: Do you have information there
23 as to his address?

24 MARSHAL DIXON: He lives at 2807 Alhambra
25 Circle.

1 THE COURT: Spell that.

2 MARSHAL DIXON: A-l-h-a-m-b-r-a Circle,
3 Nashville. That is also where his wife supposedly
4 resides.

5 We found out what kind of cars they drive
6 and everything and we have people watching. Her car has
7 not returned except for 30 minutes. His car comes and
8 goes. He reports for work at three o'clock in the
9 afternoon from Sunday through Thursday at the department
10 of Mental Health.

11 So, he wouldn't be very difficult to find.
12 We would just go to his place of employment.

13 THE COURT: All right. I am going to
14 issue an order for Mr. Mann to appear and give testimony.
15 I am going to ask that the Marshal's Service serve the
16 order on him and bring him here for his testimony.

17 Is that in accordance with your usual and
18 customary procedures or do you consider that to be out of
19 the ordinary in any fashion?

20 MARSHAL DIXON: For us to bring him
21 here?

22 THE COURT: Yes.

23 MARSHAL DIXON: Are we talking about an
24 arrest or just an escort?

25 THE COURT: At this point we would like to

1 escort him, I think.

2 MARSHAL DIXON: We can ask him to ride
3 along with us. If he refuses, we might be limited in our
4 authority, if you see what I mean.

5 THE COURT: Well, I am going to begin with
6 an escort. I am reluctant to issue -- let's put it this
7 way. The contempt powers of the Court are vast. But
8 until I order him here, I can't consider him in contempt.
9 He may have obstruction problems by his current conduct
10 but that is a whole different issue.

11 We will proceed that way and take it one
12 step at a time. Frankly, I was unaware you had been out
13 watching the house full-time. I appreciate your efforts
14 in that regard.

15 MARSHAL DIXON: Yes, sir.

16 THE COURT: All right. Anything any of
17 the parties want to say?

18 Thank you Marshal.

19 MR. REDICK: Not on that subject, Your
20 Honor.

21 MR. BAKER: No, Your Honor.

22 MR. REDICK: Could I address the Court?

23 THE COURT: Yes.

24 MR. REDICK: I don't want to belabor a
25 point but I want to say to the Court if the Court has any

1 further questions about this subject you had raised
2 earlier about how to consider prior proceedings in state
3 court, I wanted to address that. But, like I said, only
4 if the Court is interested. The reason I say that --

5 THE COURT: Go ahead.

6 MR. REDICK: I started the say the
7 reason I say that Mr. Dinkins is coming here to testify
8 about the post conviction procedures. I have a sense
9 that the Court is considering problems that I don't think
10 exist.

11 I just wanted to have a attempt to further
12 address that. I think the state in their position
13 continues to attribute some significance and authority to
14 Keeney versus Tamayo-Reyes that it doesn't have.

15 The only import that it has is whether or
16 not an evidentiary hearing is held. Once it goes forward
17 then it has no import. I think at this point this Court
18 can consider anything it wants to consider and then
19 decide whether or not the presumption of correctness
20 applies.

21 And in the process of that on the question
22 of ineffective assistance of counsel, that is a mixed
23 question. So the presumption of correctness doesn't
24 apply. I don't think that is a problem on the question
25 of ineffective assistance of counsel.

1 I don't want to overemphasize the
2 importance -- my point is what Mr. Dinkins' testimony
3 might be --

4 THE COURT: Well, I follow all that. I am
5 not trying to stir up a great big legal battle here. It
6 is a question of concern how all this fits together
7 chronologically. I have to at least understand what has
8 gone on before me to understand the context in which I am
9 operating.

10 I understand the difference between de
11 novo review and I understand the difference between any
12 presumptions of historical facts. Mine is really more of
13 a practical question of the time line of how all this was
14 developed, and to put it just real blunt, what have you
15 done to earn your money. What is new here?

16 Are you just Xeroxing files that everybody
17 has seen?

18 I don't believe that. I know you have
19 been busy. But I am interested in knowing what has
20 occurred to the extent that I can earlier and what has
21 occurred later so that I can understand the record as to
22 why certain legal conclusions or factual conclusions may
23 have been arrived at either in the absence or presence of
24 certain information.

25 To the best of my knowledge, most of what

1 we just heard is likely new information. I mean, there
2 was a suggestion of an affidavit. At least I don't
3 recall any prior testimony of this witness at the post
4 conviction or otherwise.

5 I may be mistaken.

6 That would be one example. If that is
7 correct, that is one thing that the courts that have
8 preceded me didn't hear. That may not affect the case
9 one way or the other.

10 It is helpful for me to know what they
11 have heard or not heard. I am not suggesting that once I
12 know that information that all the dominoes are going to
13 fall in the right place.

14 It occurs to me at the juncture where we
15 go from, Mr. Barrett to Mr. Camp to Mr. Dinkins to Mr.
16 Redick and Mr. MacLean, that there are phases of this
17 particular case -- and to put things in context, that
18 would be important to me. The legal conclusions to draw
19 from it are a totally different matter.

20 You are correct to this extent and
21 probably even more so. To the extent there is de novo
22 review, it doesn't matter. If it is de novo, it is de
23 novo. I can reach my conclusions just as it says, de
24 novo.

25 But in the context of determining de novo

1 review it is helpful to know if in reaching my
2 conclusions whether somebody else has considered that
3 information before and if so the light in which they
4 found it.

5 We have a long record here. We have a
6 couple opinions and some of them say, for instance, this
7 is ineffective assistance of counsel and others say it
8 doesn't matter.

9 It will be helpful for context. That is
10 my only point.

11 I am not trying to reach a legal
12 conclusion here. I am trying to get -- what I am trying
13 to do, as Dr. Sadoff says, we all try to do is just put
14 some order on information. I am constantly striving to
15 achieve order and never obtaining it. Maybe I will never
16 figure out the answer to this question.

17 Any guidance anybody has is welcome. If
18 you don't want to give me guidance, that is okay.

19 Mr. Baker, you look puzzled. That is a
20 finding of fact.

21 MR. BAKER: We will stipulate to that. I
22 may look like that normally anyway.

23 THE COURT: I am sure I look like that
24 about half the time today.

25 MR. BAKER: Just briefly, thinking about

1 your comments, obviously the state courts considered what
2 is in the state court record. We know that.

3 THE COURT: I understand. I can dig
4 through all this stuff and line it up and draw charts.
5 But to the extent you already know the answer, it would
6 be helpful. I am not asking for a 50 page brief.

7 MR. BAKER: I guess to answer that, in a
8 detailed sense, obviously, Dr. Sadoff is new. We haven't
9 had it before. Dr. McCoy is new. That I think is
10 obvious.

11 The witness we just heard is new. I think
12 that is obvious.

13 Some of the things some of the other
14 witnesses said appear to be new, or at least different.

15 So, in a real brief, general sense, those
16 are my observations on the issue.

17 THE COURT: All right. Thank you. At
18 this point I guess we ought to take a break until Mr.
19 Dinkins arrives.

20 MR. REDICK: Is that 4:30, Your Honor?

21 THE COURT: Tentative time is 4:15.

22 I know the court security officers have
23 certain schedules and if we could insure we have somebody
24 here for the hearing. You might have to rotate out. If
25 you could invite someone in, that would be great.

1 We will break until 4:15. If you're going
2 to stray very far, if you will tell Mr. Noles where we
3 can find you. If you are going back to your office or
4 wherever you are going -- in case Judge Gayden declares a
5 mistrial in the next few minutes and he comes over here.

6 But if you don't hear from us, wander down
7 here about 4:15

8 (Whereupon, the Court was in recess.)

9 THE COURT: Mr. Dinkins, thank you for
10 being here. I appreciate your professionalism.

11 One quick matter I want to bring to the
12 attention of the parties. We had a discussion about Mr.
13 Vincent Mann, and Marshal Dixon was in here in that
14 discussion.

15 After we adjourned, I did an order. A
16 copy is on your table. As you might notice I didn't
17 include the language I thought I would include about
18 escorting Mr. Mann here.

19 The reason for that, I was concerned as to
20 whether a perception of custodial arrest or something
21 along that line.

22 Although I have concerns about Mr. Mann's
23 behavior at this point, I determined that I needed to
24 move more incrementally.

25 We may ultimately have to have him

1 arrested and brought here but I felt the appropriate use
2 of the authority given me is to have him served and
3 impress upon him the importance of being here.

4 If he is not here then we may take more
5 appropriate action. I left out that particular language
6 and I wanted to explain the reason.

7 I have been handed the return. He has
8 been served. He is aware that he needs to be here and
9 we will see.

10 MR. REDICK: He is here in the building?

11 THE COURT: No. He has been served and
12 ordered to appear on February 13th at noon, and Marshal
13 Dixon reported to me that he personally spoke with him.
14 He recounted that Mr. Mann asked for my telephone number
15 and that the Marshal told him it might be a good idea to
16 bring his wife with him.

17 So, we will see where we go from there.

18 I want to make sure that I don't exercise
19 more power than appropriate. We will give him an
20 opportunity to say his peace first.

21 Again, Mr. Dinkins, I apologize for the
22 circumstances of you having to be here this afternoon.
23 All I can say is thank you and I appreciate your
24 professionalism.

25 I could go into a long harangue why it was

1 necessary and the tortured schedule.

2 Unless you feel that necessary, I will
3 just thank you for being here. I am sure you want to get
4 it over with. You want me to quit talking.

5 If you want to step forward and raise your
6 right hand, we will put you on.

7 (Whereupon, the witness was duly sworn.)

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EXAMINATION OF RICHARD DINKINS

BY MR. REDICK:

Q. Mr. Dinkins, you are an attorney here in Nashville, Tennessee, are you not?

A. Yes, I am.

Q. How long have you been a member of the bar of State of Tennessee?

A. Since September, 1977.

Q. And during that period of time, in general terms what kind of practice have you had?

A. I have had -- well, I have been in private practice in a small law firm throughout. Began basically as a two-person law firm. At one point we had six lawyers and we now have three lawyers.

My personal practice throughout those years has been 90 percent plus civil work in terms of trials and lawsuits and what have you, and that has been probably 50 -- 40, 50, 60 percent of my overall practice.

Q. In '88 you were appointed by Judge Kurtz to represent James Jones on his direct appeal and sentencing of a murder case in this county, were you not?

A. Yes, I was.

Q. Do you recall who was in your firm at that time?

What was the name of the firm?

1 A. Williams and Dinkins.

2 Q. And the Williams part is Avon Williams, is that
3 correct?

4 A. Yes.

5 Q. Senator Avon Williams?

6 A. Right.

7 Q. Do you recall who was in the firm then?

8 A. In '88 probably Senator Williams, myself, Russell
9 Perkins and Ron McNutt.

10 Now, may I put a footnote there?

11 Beginning in about 1986, Mr. Williams attracted Lou
12 Gehrig's disease and basically wound out or retired from
13 active practice. Even though he was serving as partner
14 in the firm, he wasn't active. As a matter of fact, I
15 believe we hired Ron McNutt in about '86 to sort of pick
16 up the work that Senator Williams left.

17 Q. He was still drawing business to the firm, was he
18 not?

19 A. Who?

20 Q. Senator Williams?

21 A. Yes. His name was.

22 Q. His name was drawing business to the firm. But he
23 wasn't able to serve his clients, is that right?

24 A. No, not in any sort of representation sort of
25 capacity. He had a few primarily friends of his that he

1 would say prepare wells for, contracts and things of that
2 sort on his home computer. But nothing -- there was no
3 pretense of any law practice. He wasn't at the office
4 and things like that.

5 Q. So, in terms of who was there doing the work,
6 there were three attorneys?

7 A. Right.

8 Q. Now, when you were appointed -- let me ask you
9 this at this time. When you were appointed in the case,
10 how much criminal experience had you had?

11 A. Very little. A significant part of the criminal
12 work I had handled were cases that were somehow related
13 to police misconduct lawsuits that I had been involved
14 in, where there might have been a related charge of
15 assault or resisting arrest or what have you.

16 Those were usually resolved at the General
17 Sessions level.

18 I had been involved in one trial, jury
19 trial I handled myself of a criminal case.

20 Q. Was that a grand larceny case?

21 A. Aiding and abetting grand larceny, I think it
22 was.

23 And I had been appointed by, I believe,
24 Judge Morton to represent a person who was charged as
25 part of a fencing operation. There was either a federal

1 check involved or some aspect, something that gave the
2 federal court jurisdiction over the offense. Judge
3 Morton appointed me on that. I believe it was
4 Chancellor --

5 Q. Before you get away with that case, was that the
6 case where there was retained counsel from Memphis and
7 you sat in as local counsel?

8 A. No.

9 Q. That is some other case?

10 A. The case I am talking about there was a federal
11 appointment and a related state prosecution of the same
12 person arising out of the same operation. So, I was
13 likewise appointed on the state proceeding.

14 And the case you mentioned was a case
15 involving prosecution of Danny Owens that was transferred
16 up here from Memphis.

17 I think Judge Wiseman said he drew the
18 short straw. Judges over in Memphis called him and asked
19 him. The case was moved out of Memphis because of
20 pretrial publicity.

21 I was basically hired the weekend before
22 the trial to advise on the local rules and help pick the
23 jury and things of that sort. Not a major role in terms
24 of laying out the case.

25 Q. So, you had tried one criminal case for aiding and

1 abetting grand larceny, you assisted in this case with
2 counsel from Memphis.

3 Am I correct, you had tried one other case
4 in federal court, criminal case?

5 A. Well, that was resolved.

6 Q. It was settled?

7 A. Yes. I believe that is all. And then these
8 little General Sessions cases.

9 Q. Okay. So, you hadn't done any death penalty
10 work?

11 A. Oh, no.

12 Q. And when did you --

13 A. I might say in order to be complete, I had worked
14 on a criminal appeal that Senator Williams had, James
15 Thomas Jefferson.

16 There was one other criminal appeal over
17 in Jackson I worked on.

18 Q. Were those after you were admitted to the bar or
19 still a law clerk, law student?

20 A. The Jefferson was when I was in law school and the
21 one in Jackson was when I was a lawyer.

22 Q. The one that was in Jackson, was that a contempt
23 citation case?

24 A. Yes, it was.

25 Q. So, are you aware of all standards of eligibility

1 in the Supreme Court, Rule 13, in death penalty cases?

2 A. I am now.

3 Q. Do you know whether or not you --

4 A. Vaguely familiar.

5 THE COURT: Are we talking about the
6 current standards.

7 MR. REDICK: The current standards.

8 Q. My question is, when you were appointed in 1988
9 had those rules been in effect then would you have
10 satisfied those eligibility rules?

11 A. I do not believe I would have.

12 Q. When you were appointed in 1988, were you
13 contacted in person by Judge Kurtz?

14 A. No, I was not.

15 Q. How did you find out about your appointment?

16 A. I received a phone call one afternoon from Mr.
17 Rahman. He advised me that I had been appointed. My
18 mail had not arrived at that point. He advised me I had
19 been appointed to represent him in his murder case.

20 I actually thought he had the wrong
21 person. There is a lawyer named Richard Jackson and he
22 and I look alike, and during that period people would
23 confuse us. I said, well, you must have the wrong
24 person. I don't handle those.

25 I remember he said I know, or something to

1 that effect.

2 Q. Because Mr. Abu-Ali changed his name -- he is now
3 Muslim and before he wasn't -- if you want to refer to
4 him as Mr. Jones, I don't think he will be offended by
5 that.

6 A. All right.

7 Q. Did you have any conversation at all with Judge
8 Kurtz once you received notification of this?

9 A. No.

10 Q. Did you then proceed to represent Mr. Jones?

11 A. Yes.

12 Q. Did you have any assistance? DEA point another
13 attorney to assist you or any other assistance?

14 A. On the appeal, no.

15 Q. What was the situation in the firm? You said
16 there were three lawyers in the firm.

17 What was the degree of hardship for you in
18 terms of this appointment?

19 A. Well, comparatively it was something -- that the
20 appeal was something that I was able to absorb without
21 significant hardship.

22 If I may explain a little bit. I don't
23 know how many of you all have been in private practice
24 but it is -- and I tell people at work -- 26 miracles a
25 year every time payroll runs around.

1 Because of the retirement of Senator
2 Williams from practice, we had closed out a lot of his
3 cases that had generated some funds. And so there was
4 not a real, real money crunch there, the fact that Ron
5 McNutt had been hired basically to handle Senator
6 Williams work and as that was winding out, picked up his
7 own and he was able to pick up some of my work.

8 So, it was not comparatively a significant
9 drain. But it was a drain.

10 Q. What compensation rate were you eligible for under
11 this appointment?

12 A. I think it was \$20, \$30 an hour.

13 Q. Could it be \$20 out of court work and \$30 in-court
14 work?

15 A. That sounds about right.

16 Q. What was your normal hourly compensation rate from
17 fee-paying clients at that time?

18 A. Then it was probably 120, 135 an hour. Somewhere
19 in there.

20 Q. So, you were eligible to be compensated as court
21 appointed counsel in this case for a fifth or sixth of
22 what you were paid by fee-paying clients?

23 A. Yes.

24 Q. When you filed -- when the direct appeal was over
25 with, did it come to you to prepare a petition to be

1 signed pro se by Mr. Jones?

2 A. Yes. Basically after the appeal and after the
3 certificate petition was filed, I can't recall, one
4 called me and said that an execution date had been set
5 and that some sort of stay application needed to be
6 prepared, and then a post conviction as either part of
7 that or shortly in after. I can't remember exactly.

8 Q. Did you have any intention then of representing
9 Mr. Jones on post conviction?

10 A. No.

11 Q. You filed a petition in order to gain a stay?

12 A. Yes.

13 Q. Now, did there come a time you were notified you
14 were appointed on the case?

15 A. Yes.

16 Q. Did the circumstance of you being post conviction
17 counsel present a problem for you you didn't have as
18 counsel on direct appeal?

19 A. Several.

20 Q. What were they?

21 A. Well, first of all as counsel on the appeal and
22 later counsel on post conviction, I knew that the post
23 conviction was a proceeding to review the accuracy of the
24 representation.

25 I was concerned about the priority of that

1 as well as the practical parts of that.

2 Q. You are talking about the circumstance of raising
3 questions concerning your own ineffectiveness on appeal,
4 is that right?

5 A. Without admitting that, yes.

6 Q. Were there any other problems?

7 A. Well, by that point and I can't remember exactly
8 what it was, the source of finances and what have you at
9 the firm had changed.

10 In probably late '89 while I was out of
11 the country for three weeks, we ended up hiring another
12 lawyer. With the related overhead and expense there
13 and we also sort of expanded the support staff,
14 basically the firm was a bit larger, the overhead was
15 a bit higher.

16 We have always had a lot of work. Not
17 always had enough money, you know. So, there was some
18 financial pressure that kind of came along with that.

19 I might elaborate on that. A lot of the
20 cases that Mr. Williams handled and I had handled were
21 what is known as fee generating or contingency fees,
22 civil rights and accidents and what have you.

23 The actual billable hours sort of work
24 was not a major or even a substantial part of our
25 revenue.

1 And so one of the things I realized was
2 that as Senator Williams retired and what have you and
3 sadly as the law was changing in civil rights matters
4 raising the bar for the plaintiffs, so to speak, that we
5 were not able to rely as much on the fee generating sort
6 of matters.

7 We also lost some of the accident business
8 to advertisers, I might say.

9 Q. What you're saying is that financially it got
10 tighter as you moved from direct appeal counsel to the
11 post conviction case?

12 A. Yes.

13 Q. Now, the post conviction record reported at page
14 16 indicates you were appointed on May 21, 1991. Does
15 that sound right?

16 A. Probably. I wouldn't argue with that.

17 Q. Did you upon this appointment -- were you
18 contacted by the court?

19 A. Not as I recall. Not prior -- I was not asked
20 would you, if that is what you are asking.

21 Q. There weren't any questions of you, whether or
22 not it would create a hardship or what your perception
23 of your own qualifications to take on this task or
24 anything?

25 A. None.

1 Q. How did you find out about the appointment?

2 A. Probably by mail, a copy of the order.

3 Q. At the time you received this appointment, in your
4 own mind, did you have any idea what was expected of you
5 as a post conviction counsel in a capital case?

6 A. None. Other than looking at the adequacy of the
7 representation that he had received during the trial.

8 Q. Did you feel comfortable with how to even go about
9 that?

10 A. I was absolutely -- well, there was sort of a
11 manual that I had basic reference.

12 No, I don't want to mislead anyone that I
13 felt comfortable with taking on that litigation. You
14 know, I considered it as major litigation because a man's
15 life was at stake now.

16 Q. Would you say you felt more comfortable
17 representing him on direct appeal as opposed to post
18 conviction?

19 A. Well, in the appeal the record was already made.
20 It is a whole other thing making your own record. And
21 so, you know, to that extent the appeal didn't pose these
22 professional concerns that the post conviction posed.

23 Q. As you sit here today and look back on the day
24 when you were appointed, do you have a better
25 appreciation about what is involved and required of

1 counsel on post conviction?

2 A. Oh, yes. I am much better educated.

3 Q. So, what did you do in response to the fact that
4 you had been appointed to represent Mr. Jones in post
5 conviction?

6 A. Well, I don't want to be evasive or anything, but
7 I don't know how to answer that.

8 Q. I can ask you in a little more precise
9 questioning.

10 THE COURT: Let me ask you this. The
11 petitioner dropped post conviction ineffective assistance
12 of counsel claim.

13 What issue are we pursuing here?

14 MR. REDICK: I am trying to develop
15 testimony from Mr. Dinkins about his ability and ultimate
16 co-counsel's ability to present their case.

17 MR. BAKER: I thought the issue was
18 ineffective assistance of appellate counsel. I don't
19 think we are doing it on post conviction counsel. I
20 don't believe that is a viable issue or claim at all.

21 THE COURT: The post conviction --
22 ineffectiveness of post conviction counsel claim is no
23 longer part of the lawsuit. The question about the
24 direct appeal seems to me to be part of the lawsuit.
25 What am I missing here?

1 MR. REDICK: Maybe I am not being very
2 precise. I am not talking about ineffectiveness of post
3 conviction counsel. I am trying to look at the full and
4 fairness of the hearing.

5 MR. BAKER: I think what transpired and
6 the process available that is in the record and state
7 laws and everything else -- it seems like we are doing an
8 issue that is no longer an issue in the case.

9 MR. REDICK: If the court has no interest
10 in it, I can abbreviate the testimony.

11 THE COURT: Well, I don't fully understand
12 your full and fair hearing argument.

13 Are you saying because post conviction
14 counsel was ineffective he didn't have a full and fair
15 hearing and, if so, aren't we just chasing our tail about
16 whether it is ineffective assistance of counsel?

17 MR. REDICK: What I think I am eliciting
18 testify about is the hearing that the state gave to this
19 petitioner, not whether or not his counsel provided
20 adequately but whether or not process was made available
21 to him.

22 MR. BAKER: Your Honor, the process is in
23 the record. This attorney was an attorney in the case.
24 We are not arguing whether he was effective or not. We
25 are arguing whether the process was a full and fair

1 process, which the state laws and the hearing that was
2 afforded him is all in the case books and in the statutes
3 and in this record.

4 I don't think we are here litigating any
5 ineffective assistance of counsel.

6 THE COURT: I will let Mr. Redick ask a
7 few more questions and see where this is headed. But in
8 terms of ineffective assistance of post conviction
9 counsel, that is no longer part of the lawsuit.

10 You should focus your questions on what
11 you call the full and fair hearing issue and let me just
12 listen a little while and see. I have concerns about
13 that.

14 MR. REDICK: Judge, I am proceeding under
15 the assumption, for example, that the rate of
16 compensation, the amount of assistance he had and support
17 he had conflicted it with other business, that all these
18 things affect the fairness of the hearing, the
19 qualifications and experience he had.

20 I think by the fact that the Tennessee
21 Supreme Court has promulgated rules about eligibility of
22 these things speaks to whether the hearing is full and
23 fair.

24 That is an assumption I am making when I
25 am asking these questions. I think it is not about his

1 effectiveness under the Sixth Amendment but about whether
2 there was an effective hearing.

3 THE COURT: I will let you explore it a
4 little bit. I am not sure I fully understand all that.
5 Go ahead.

6 Q. Let me ask you this. In response to being
7 appointed as counsel, did you file a motion to withdraw?

8 A. Yes, I did. Yes, I did at some point. I am not
9 sure when.

10 Q. And was there a hearing on your motion to
11 withdraw?

12 A. There was a hearing either on that or on a motion
13 I filed for help. I can't remember which.

14 Q. Could it have been you filed a motion to withdraw
15 and a hearing was held and in the course --

16 A. I know I filed a motion to withdraw. I know that
17 there was a hearing.

18 Q. At the hearing it became clear that the judge
19 wasn't going to allow you to withdraw and then became a
20 discussion about whether you would have assistance or
21 not?

22 A. Yes, I remember that. Only thing I am saying, I
23 am not sure that was directly on the motion or some other
24 motion.

25 Yes, I remember that hearing well.

1 Q. Tell us about that?

2 A. At that point, we had probably in July of '90
3 picked up a piece of business at the firm that was an
4 insurance receivership of handling the administration of
5 an insolvent insurance company. That is still present
6 now, as a matter of fact.

7 But sort of related to that was an action,
8 a malpractice lawsuit. So, I personally -- the firm --
9 certainly my efforts were probably 60 or 70 percent just
10 on that one account.

11 Q. Mr. Dinkins, tell us what happened at the
12 hearing.

13 MR. BAKER: Your Honor, if we are
14 talking about the hearing, the transcript is before
15 the court.

16 I don't see why we have to have this man
17 tell us about what is in the transcript 10 years ago or
18 in 1993, or whenever the hearing was.

19 A. This is not the hearing on post conviction
20 relief.

21 THE COURT: I am going to let this go on a
22 little further. We are going to need to stay to the
23 procedural structure here.

24 The ineffectiveness is gone. I will let
25 him describe how he came to be joined by others as

1 counsel?

2 A. At that hearing, I argued very vehemently that the
3 appointment was an imposition, for various reasons, and
4 that I just simply was not able to handle it.

5 Judge Kurtz initially suggested that he
6 would appoint Ron McNutt of my office. I argued more
7 vehemently about that to the point of suggesting that
8 he should appoint some lawyer from one of the large
9 firms.

10 I remember now I did kind of reached my
11 wits end, but appoint some of those \$400 an hour lawyers
12 to come over here and take 20 an hour. And he took it
13 under advisement, as I recall, and appointed Bill
14 Shullman.

15 Q. He didn't appoint Bill Shullman on the spot, did
16 he?

17 A. Not as I recall.

18 Q. You received notice later he did?

19 A. Probably.

20 Q. Was Mr. Shullman of much assistance, or what
21 degree of assistance in the case?

22 A. No, he was not. Bill at that point was -- first
23 of all, I don't think Bill had ever been in private
24 practice. As long as I had known him, he had been in the
25 Public Defender's Office or the Public Defender.

1 He at that point was a professor out at
2 M.T.S.U., had no law practice and no office.

3 I was looking to Bill to help me out and
4 to really take responsibility for the case.

5 Bill never assumed that responsibility.

6 Q. Did you feel like you were able or willing, either
7 one, to assume responsibility for lead counsel.

8 MR. BAKER: I object. We are arguing on
9 ineffective assistance of counsel.

10 THE COURT: Sustained. That is the --

11 MR. REDICK: It affects the hearing, Your
12 Honor.

13 THE COURT: I think we are getting far
14 afield. I think we are trying to go through the back
15 door of the full and fair hearing to make an ineffective
16 assistance claim.

17 I am not going to let you do it. If you
18 want to ask the witness how Mr. Morrow came to be in the
19 case, that may still have some value.

20 MR. REDICK: Well, that is where I am
21 headed.

22 Q. Were you all able to put the case together?

23 A. No. No way, shape or form. And there were
24 several --

25 MR. BAKER: I object again. He is asking

1 the same inquiry. We need to get to an issue.

2 THE COURT: I don't mean to -- the truth
3 is somewhere in the middle here.

4 If Judge Kurtz had appointed a six year
5 old to represent the defendant then that may raise full
6 and fair hearing issues. So it is a matter of degree.
7 There is a difference between totally ineffective and
8 totally incompetent procedure.

9 Now, I am not suggesting any of the
10 lawyers appointed were six years old. I am using that
11 for emphasis.

12 But what I am not going to allow here is
13 to have Mr. Dinkins examined like we did Mr. Barrett and
14 Mr. Camp, where there are aggressive issues about
15 ineffective assistance of counsel.

16 But if Mr. Redick can prove that the whole
17 process stinks then that may raise the full and fairness
18 issues.

19 The mechanics of how the lawyers were
20 appointed and their basic qualifications I think relate
21 potentially to full and fair hearing issues.

22 We are not going to go down the road of
23 which document did you get and who did you contact and
24 all that. I think that relates to ineffective
25 assistance.

1 Those are my views of the current status
2 of it. I understand both of you are being zealous
3 advocates. That door is closed.

4 MR. REDICK: I certainly understand that.
5 I will try to move along here.

6 THE COURT: Go ahead.

7 Q. Is it your recollection that Mr. Morrow entered
8 the case three month before the hearing in this case.
9 The hearing was on May 10, 1993?

10 A. That sounds about right.

11 Q. And according to the post conviction technical
12 record Mr. Morrow was appointed on January 28, 1993?

13 A. Okay.

14 Q. Does that sound about right?

15 A. Yes.

16 Q. Okay. Now, if I could --

17 MR. REDICK: Your Honor, I have a couple
18 exhibits that are part of the ex parte record.

19 THE COURT: All right.

20 MR. REDICK: May I approach the witness?

21 THE COURT: Yes.

22 Q. I would ask you, Mr. Dinkins, to identify what
23 this is.

24 A. This is an order that Judge Kurtz entered in
25 January authorizing some funds.

1 Q. Now, this is January 26, 1993.

2 This is less than four months before the
3 hearing, correct?

4 A. Yes.

5 Q. Of May 10th?

6 A. Yes.

7 THE COURT: Could I ask you maybe a stupid
8 question. This was an ex parte motion with a copy of the
9 order that went to the Assistant Attorney General?

10 MR. REDICK: That is what it appears.

11 THE COURT: Not very ex parte.

12 MR. REDICK: That's right.

13 THE COURT: Just wanted to make sure I
14 didn't miss anything.

15 MR. BAKER: The motion is the basis for
16 the request.

17 THE COURT: Well, what can I say? I think
18 that is wrong.

19 Now, I don't know if it is going to make
20 any difference in this case.

21 Mr. Zimmermann doesn't need to know what
22 Mr. Dinkins is using for expert witness fees.

23 Q. Do you have any personal memory that a copy of
24 this was certified to the District Attorney General?

25 A. No.

1 Q. Could you read what their order says?

2 A. By order of December 3, 1992, this court
3 authorized amount of \$2,000 to be used by petitioner for
4 investigative services and \$2,000 for mental health
5 services.

6 Petitioner now seeks by ex parte motion
7 additional funds. The court will authorize an additional
8 \$1,000. This case has been pending for a protracted
9 period of time and counsel have had more than sufficient
10 time to prepare. No more funds are necessary for a full
11 and fair hearing.

12 Q. This would be as of January 26, 1993, a total of
13 \$5,000 for investigation and for mental health services
14 authorized for you, is that correct?

15 A. Yes.

16 Q. Now, if I could, I have another ex parte order
17 that --

18 THE COURT: Choose your words carefully.

19 MR. MACLEAN: I think that was Exhibit
20 144.

21 MR. REDICK: Yes. I am sorry.

22 MR. MACLEAN: The one we just discussed.

23 THE COURT: Mr. Noles?

24 THE CLERK: That's correct.

25 MR. REDICK: Then, Your Honor, as Exhibit

1 Number 145, another order that may or may not be an ex
2 parte order.

3 Q. Mr. Dinkins, if you can follow me along. I am
4 looking at this order.

5 This order is dated April 28, 1993,
6 correct?

7 A. Yes.

8 Q. So this order is almost two weeks before the
9 hearing, not quite two weeks before the hearing?

10 A. Yes.

11 Q. And if you look at the sixth line down there is a
12 sentence that begins, the filing of a post conviction
13 petition?

14 A. Yes.

15 Q. And the remainder of the order says, the filing of
16 post conviction petition in a case which the petitioner
17 has received the death penalty is not a carte blanche
18 authorization for the state to open its checkbook and
19 give petitioner's unlimited funds.

20 This case was filed well over a year ago,
21 competent counsel appointed, and their services have been
22 augmented by an attorney from Capital Case Resources
23 Center. The court has previously authorized significant
24 funding for investigative services and mental health
25 services.

1 Further funding is unnecessary for a full
2 and fair hearing on this petition.

3 Now, according to the records as I read
4 them, you had at the time the hearing started received
5 \$2,000 for investigative funds and \$6,317.50 for, quote,
6 mental health services.

7 Does that sound right?

8 A. If that is what the record shows, Mr. Redick.

9 THE COURT: Can you give me the figures.

10 MR. REDICK: \$2,000 for investigation and
11 6,317.50 for mental health services.

12 According to my understanding, Your Honor,
13 those were the funds that were actually authorized and
14 paid.

15 THE COURT: 2,000 for investigative and
16 6,317 for mental health?

17 MR. REDICK: Yes.

18 THE COURT: The question is whether that
19 is correct.

20 A. If that is what the record shows. I won't argue
21 with that.

22 Q. Do you have any reason to think it is anything
23 other than that, any more?

24 A. It wasn't any more than that, I know.

25 Q. At the time the hearing started, do you have any

1 recollection -- personal, independent recollection
2 whether there was any question in your mind you could
3 get any more money out of the judge to help put on your
4 case?

5 A. No. We would not get any more money.

6 Q. Did he make, the judge make it clear you weren't
7 going to get any more money?

8 A. Well, this order did. As well as the previous
9 order.

10 Q. Did Mr. Morrow assist you in your ability to
11 prepare the case?

12 A. Absolutely.

13 Q. Did he enter the case in sufficient time given
14 the amount of money the court authorized for you to
15 prepare the case to your satisfaction?

16 A. No. No. I will just say no.

17 You know, I know of witnesses, Mr. Jones'
18 brother I believe out in Hawaii was someone we wanted to
19 put on.

20 Q. I am going to ask you about that. Are you aware
21 of any money that was spent at the trial of the case for
22 investigative purposes or any kind of forensic expert
23 assistance?

24 A. No, I am not.

25 Q. Do you recall an attempt try to get funds to bring

1 a witness in?

2 A. His brother, yes.

3 Q. Tell Judge Campbell about that.

4 A. As I recall, we had spoken with him on a couple
5 occasions by phone over in Hawaii. It was hard because
6 of the time lag.

7 We sought funds to bring him here in order
8 to testify related to some, what I will call, childhood
9 issues.

10 Q. Who is this witness you are referring to?

11 A. Mr. Jones' brother.

12 Q. Do you remember his name?

13 A. No, I don't.

14 Q. Was it Mark Jones?

15 A. It may have been.

16 Q. Do you recall a colloquy between Mr. Morrow and
17 the court about putting on psychiatric testimony and
18 limitations also being placed on his opportunity to
19 present psychiatric testimony?

20 A. I recall the time we were limited in terms of time
21 we had for that, or something like that.

22 Yes. I remember a limit, yes.

23 Q. Do you have questions in your own mind about Judge
24 Kurtz' impartiality in this case?

25 A. I will say that it is my opinion that he did not

1 approach this case with, shall I say, thoughtful
2 consideration that I think should be devoted in any case
3 but particularly where a man's life is at stake.

4 Without casting aspersions on Judge
5 Kurtz -- because I have known him for many year and have
6 a lot of respect for him -- I don't believe he
7 appreciated the seriousness of the issues and I believe
8 that after the jury came back and convicted Mr. Jones and
9 sentenced him to the death penalty, that Judge Kurtz
10 really didn't take the type of detached view that I think
11 a judge in a post conviction or in a proceeding like that
12 should have.

13 Q. Let me ask you this. They had a statutory
14 procedure in effect at the time where the trial judge sat
15 on the case would be the judge who sits on the post
16 conviction hearing.

17 Did you think that created problems for
18 Judge Kurtz to hear the case with a fresh view?

19 A. Well, I think certainly anytime -- I won't say
20 anytime. I think that did allow the opportunity for the
21 consideration of things which may not have been a part of
22 the record.

23 For instance, we were never -- post
24 conviction counsel was not there at the trial. The judge
25 was. Okay. We did not observe Mr. Jones at the trial.

1 The judge observed him.

2 The judge may very well have formulated an
3 opinion because there was -- Mr. Jones did testify in the
4 penalty phase. And the judge may well have formed some
5 opinions that would not have been --

6 MR. BAKER: I want to object?

7 A. -- part of the record.

8 THE COURT: What is the objection?

9 MR. BAKER: I object to the question and
10 answer and move it be stricken. He is speculating about
11 the thought process of the judge in the case.

12 THE COURT: Granted in part and denied in
13 part.

14 I don't think the witness can possibly
15 know what Judge Kurtz was thinking.

16 The witness made a fair point if the post
17 conviction judge is also the trial judge then he knows
18 certain things that he can't unlearn. So, that is the
19 structure.

20 Next question.

21 Q. Mr. Dinkins, were you aware of Mr. -- Judge Kurtz
22 demonstrate to you any questions of impartiality with
23 reference to Mr. Barrett, his trial counsel?

24 A. I think the order that he entered was really
25 bent.

1 In the course of the hearing, I remember
2 he raised an issue about whether Mr. Barrett
3 intentionally sabotaged the case.

4 I thought that was just incredible for a
5 judge to say. Because I am not sure that that was
6 relevant on any issue.

7 But I think Judge Kurtz did defer to the
8 reputation of Mr. Barrett as one who was experienced in
9 death penalty cases.

10 THE COURT: Didn't Judge Kurtz find that
11 Mr. Barrett was ineffective?

12 A. As I recall, he found that Mr. Barrett was but
13 that there was no prejudice, or something like that.

14 THE COURT: All right.

15 Q. Were you aware that Judge Kurtz also presided over
16 the charges against Devalle Miller, the plea and
17 sentencing of Devalle Miller?

18 A. I was not specifically aware of that. I don't
19 remember that now. I may have known it then.

20 Q. Let me ask you this. How much time did you spend
21 with Mr. Jones talking to him?

22 A. Oh, probably about three or four times during the
23 appeal and probably about three or four times during the
24 post conviction.

25 Q. Did you ever discuss with him his version of how

1 the offense occurred?

2 Did you ever discuss with him how the
3 offense occurred?

4 A. As I recall, he basically had no memory of what
5 happened once he was in the house.

6 So, yes and no. Yes, we talked about it
7 but, no, as I recall he had no memory of what happened
8 once he was in the house.

9 MR. REDICK: That is all the questions I
10 have.

11 THE COURT: Mr. Baker.

12 A. Judge, might I pose a request for leniency with
13 Mr. Baker also. I need to pick up my son about 5:30. He
14 is only about five minutes away. I can bring him back
15 here.

16 THE COURT: Do you need to leave by 5:30
17 or be there by 5:30?

18 A. I need to be there by 5:30.

19 THE COURT: Mr. Baker, tell me your plans
20 so I can make an informed decision.

21 MR. BAKER: It won't be long. It will be
22 short.

23 THE COURT: How long a drive is it?

24 A. Right over at McKendree.

25 THE COURT: All right.

1 A. Five minutes away.

2 THE COURT: I understand day-care
3 sanctions.

4 Mr. Baker, you go ahead and I will -- Mr.
5 Dinkins, when you get to the point of being nervous,
6 raise your hand.

7 A. Well, the sanctions are not as nearly erroneous as
8 the ire I will face from my wife if I am not there.

9 THE COURT: I understand the spouse
10 sanctions as well. Go ahead, Mr. Baker.

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EXAMINATION OF RICHARD DINKINS

BY MR. BAKER:

Q. Mr. Dinkins, you mentioned you received money in the post conviction proceeding from the court for investigative services and psychiatric services.

You were able to hired a Dr. Neurcomb that testified?

A. Yes.

Q. And Dr. Pam Auble, a psychologist that conducted psychological testing?

A. Yes.

Q. You were able to hire an investigator, Mr. Ron Lacks?

A. Yes.

Q. You had Paul Morrow as an attorney on the case, as I recall, and Mr. Shullman?

A. Yes.

Q. And you had resources from the Capital Case Resource Center to assist you?

A. Well, no, not particularly money but more in terms of --

Q. Assistance, not monetary?

A. Right.

Q. But manpower?

A. Well, Mr. Morrow.

1 Q. And he had the ability to draw expertise and
2 knowledge from and assistance from Capital Case
3 Resources?

4 A. Presumably so, yes.

5 Q. And, of course, you were able to obtain the
6 petitioner's prison records, school records, military
7 records, prison records?

8 All those were obtained at the post
9 conviction process?

10 A. Yes.

11 Q. Did you ask the state court to hire a forensic
12 expert?

13 A. To the best of my knowledge, no.

14 Q. In fact, as you testified at the post conviction
15 proceeding, it was Mr. Morrow and Mr. Shullman who
16 handled the ineffective assistance of appellant counsel
17 issue, correct?

18 A. Right.

19 Q. And you intentionally removed yourself from that
20 aspect of the case, correct?

21 A. Right.

22 Q. In fact, don't you believe that it would be of
23 assistance to a petitioner such as Mr. Jones to have the
24 benefit of the knowledge of appellate counsel to assist
25 the other counsel?

1 You had a lot of knowledge about his case
2 that you could transfer to his other attorneys as well,
3 correct?

4 A. Nothing more than that which was already
5 available. All I had was the record.

6 Q. You reviewed the record and you had talked to him,
7 you knew what transpired at his trial, you knew the
8 issues he may be concerned with?

9 A. For purposes of the appeal, yes.

10 Let me say this though. His involvement
11 or advice relative to the appeal was very limited because
12 the appeal was based on the record. The record had
13 already been made, okay --

14 Q. Right.

15 A. -- of the trial. The post conviction proceedings
16 was, in my eyes, a new lawsuit.

17 Q. And new law suit but a subject matter about which
18 you were very familiar, his trial, correct?

19 A. I knew what I knew when I wrote the appeal brief.
20 But not the aspects of his childhood and certainly not
21 all his psychological sorts of things.

22 Q. You knew what was in the record and what
23 transpired at the trial and those type things?

24 A. Right.

25 Q. You had a familiarity with that aspect of his

1 case?

2 A. Yes, sir.

3 Q. And were able to take that into the next stage
4 when it did get to the post conviction proceedings?

5 A. The trial was really not an issue in the post
6 conviction proceeding other than as an adjunct of whether
7 Mr. Barrett and Mr. Camp had put on for him.

8 I don't mean to say put on in terms of a
9 charade. Just in terms of putting on the case.

10 Q. You talked about Judge Kurtz, that he was the
11 judge at trial who observed the trial, observed
12 attorneys' performance at trial?

13 A. Yes.

14 Q. Who observed the witnesses at trial?

15 A. Yes.

16 Q. Wouldn't he be in a very good position to address
17 issues such as ineffective assistance of counsel in a
18 post conviction proceeding based upon that knowledge?

19 A. I think that is a judgment for the court. But it
20 was my opinion that that hampered him as much as it
21 helped him.

22 Q. That is speculation on your part?

23 A. Well, no. You know how you feel when you walk in
24 a court and you know if the judge is neutral, that if he
25 is paying attention and things like that.

1 It's not entirely speculation. It may not
2 be totally objective, I mean, in terms of objective
3 proof, but lawyers have a gut feeling and my gut didn't
4 feel too good about the way Judge Kurtz handled the post
5 conviction part of this.

6 I wasn't there for the trial. I express
7 no opinion on that.

8 Q. And that is just your opinion, right, no objective
9 evidence, as you stated, that Judge Kurtz in any way was
10 negligent in is the duties as a judge?

11 A. Oh, I am not saying he was negligent. I am not.

12 MR. BAKER: That is all.

13 THE COURT: All right. Any redirect?

14 MR. REDICK: No, Your Honor.

15 THE COURT: All right. The witness is
16 released to go to day-care.

17 A. Judge, I appreciate it and I do appreciate Your
18 Honor's not sending the Marshals after me.

19 THE COURT: I did send the Marshals after
20 somebody else.

21 MR. REDICK: Mr. Dinkins was here to hear
22 about that.

23 THE COURT: I forgot.

24 Mr. Dinkins, thank you.

25 Mr. Price, thank you for acting as the

1 shuttle diplomat. I wish you good fortune in your trial.

2 Anything else we ought to take up today?

3 MR. BAKER: Nothing from the respondent,

4 Your Honor.

5 THE COURT: Okay. I don't have my list in

6 front of me but give me a brief preview, Mr. MacLean, and

7 Redick if you know of roughly what order we are going to

8 take folks in tomorrow. I know we have Mr. Zimmermann

9 and Mr. Stephenson and Mr. Alderman.

10 MR. MACLEAN: Yes.

11 THE COURT: Were those the three we were

12 talking about for tomorrow?

13 MR. MACLEAN: Yes, Your Honor.

14 THE COURT: I know you all think I am

15 paying attention. I hope your gut feels I am being

16 fair. I am not even going to ask you to answer that.

17 But I want the record to reflect at least

18 I am trying to be fair.

19 Are those the three witnesses that we are

20 contemplating?

21 MR. MACLEAN: Yes, those are the three.

22 THE COURT: Did I forget anybody?

23 MR. MACLEAN: No.

24 THE COURT: All right. Mr. Stephenson, I

25 notice he is from out of town because I have seen his

1 face on the front of the ABA journal and I know he
2 doesn't live here.

3 What is his travel schedule and do we need
4 to accommodate that?

5 MR. REDICK: He arrives in about 30
6 minutes, Your Honor, and I do not know his departure time
7 but I will at the end of today.

8 THE COURT: If we need to adjust in that
9 regard, I will work with you. I am sure Mr. Baker will.

10 Mr. Baker, any witnesses kind of issues
11 you need to raise?

12 MR. BAKER: Not at this time, Your Honor.

13 THE COURT: All right. Court stands in
14 recess until tomorrow at nine.

15 Thank you.

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